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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Summary or arbitrary executions

Addendum

Report of the Special Rapporteur, Mr. S. Amos Wako, submitted pursuant to Commission on Human Rights resolution 1991/71 on his mission to Zaire, 8-11 May 1991

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Introduction

1. Mr. S. Amos Wako, the Special Rapporteur on summary or arbitrary executions of the Commission on Human Rights, accepted, within the scope of his mandate, an invitation extended by the Government of Zaire to observe the trial in the matter State v. Koyagialo et al. At issue in the trial was the establishment of the factual circumstances surrounding the events which occurred on the campus of the University of Lubumbashi (UNILU) during the period 8-12 May 1990 and responsibility relating thereto in connecton with loss of life and threats against the life and physical integrity of persons, as well as material damage to personal and university property. 1/

2. In early May 1990, there was considerable tension on the UNILU campus. Reportedly, a group of student activists assumed partial control over various aspects of campus life. Following a series of confrontations or near confrontations between the provincial authorities and those student activists, the latter uncovered an alleged network of student informers (mouchards). During the night of 9-10 May 1990, a group of students, apparently under the control or direction of the student activists, carried out a systematic raid of the rooms of those informers, pillaging their rooms in search of "evidence" of their relationship to the State security apparatus and burning their belongings. Subsequently, three of the informers were tried before a "people's court", convicted of various wrongdoings in connection with their espionage work and sentenced to death. Before the sentence could be executed, the provincial authorities, with the authorization of the central authorities, dispatched military units to the campus to rescue the three informers, which operation was at once successful and bloodless.

3. After a further day and a half of confrontations between the student body and the authorities and a so-called security meeting of several key provincial civil and military authorities, the UNILU campus allegedly was attacked on the night of 11-12 May 1990 by a group or groups of persons generally referred to as a "commando". The alleged attack or attacks commenced between 23.00 and 23.30 hours on 11 May 1990, and concluded sometime before dawn on 12 May 1990. Reportedly, the aim of the attack or attacks was revenge upon the students who had led or carried out the operation of 9-10 May 1990. In addition to considerable material destruction, the attack or attacks officially left at least 34 students wounded and at least one student dead. On the morning of 12 May 1990, upon orders of the authorities, the students were evacuated and the UNILU campus was closed. Shortly thereafter the campus property was gutted.

4. The Special Rapporteur carried out his mission to Zaire from 8 to 11 May 1991. He visted the cities of Kinshasa and Lubumbashi and met with a number of government officials (see annex I), individuals and representatives of non-governmental organizations. It should be noted that because, at the time of the Special Rapporteur's mission, the Supreme Court had yet to render its judgement in the matter State v. Koyagialo et al., the government officials with whom the Special Rapporteur met understandably deferred making any comments on the substance of the case pending before the Court.

5. In so far as the points raised by the Special Rapporteur in his consultations with government officials were designed to shed light upon a number of the questions that were before the Court, the discussions were largely confined to a reiteration of arguments presented to the Court and an expression of the procedural fairness of the Court in its handling of the case. This latter opinion was shared, and seldom contested, by most who observed the proceedings of the trial.

6. Prior to and following the completion of his visit to Zaire, the Special Rapporteur established contacts with numerous other individuals and representatives of non-governmental organizations with the aim of supplementing the information acquired during his stay in Zaire.

7. In order to safeguard the physical and moral integrity of those who provided the Special Rapporteur with information of a sensitive nature, the Special Rapporteur established a general policy of source confidentiality. Thus, in relating information in his report, the Special Rapporteur will not reveal the identity of his sources. As noted below in section II.B, the Special Rapporteur has included only such information in his report as he believes to be credible, in the light of the totality of the information he has received and the circumstances under which such information was provided to him.

8. The task the Special Rapporteur set for himself was, within the scope of his mandate, to "discover the truth" in the affair of the so-called massacre at Lubumbashi. The extent to which the Special Rapporteur has been able to fulfil this task was, of course, a function of the information he was able to gather and analyse during the course of his mission and throughout the preparation of his report.

9. The Special Rapporteur does not claim that his methodology wholly corresponds to that of a specially constituted independent investigatory unit, nor does he claim that his findings are a substitute for those of a court of law. Rather, on the basis of what he has been able to ascertain concerning the events in question, he limits himself to indicating points at which the Government of Zaire may have failed to respect, in this instance, the recommendations and prescriptions of certain standards which comprise the legal justification of the Special Rapporteur's mandate and respect by the Government of Zaire for those standards as regards the events at issue.

10. The Special Rapporteur suggests to the Government of Zaire, based upon the information at his disposal, that certain aspects of his mandate relating to allegations of deaths and of death threats may deserve to be invoked. Consequently, and in accordance with the obligations of the Government of Zaire under the International Covenant on Civil and Political Rights, the principles embodied in the Universal Declaration of Human Rights and Economic and Social Council resolution 1989/65 on the effective prevention and investigation of extra-legal, arbitrary and summary executions, those allegations should be investigated and the results of those investigations should be communicated to the Special Rapporteur. Among other things, the aim of such dialogue is to prevent the further occurrence of extrajudicial, summary or arbitrary executions.

11. Subject to his aforementioned undertaking to respect source confidientiality, the Special Rapporteur will make himself available to discuss his report with the Government of Zaire, as well as to communicate to the appropriate authorities such information as will facilitate the response of the Government to his above-mentioned request. The Special Rapporteur will also reflect any comments which the Government of Zaire may wish to make in connection with the present report in his report to the forty-ninth session of the Commission on Human Rights.

12. In connection with the above, it should be noted that given the brevity of his mission, the Special Rapporteur had occasion neither to observe the trial nor to consult the trial files or the procès-verbaux of the trial. During the course of his mission, the Special Rapporteur requested the appropriate authorities to furnish him with copies of these and other documents designed to assist him in the preparation of his report. Upon his return from the mission, the Special Rapporteur formalized these requests in writing. For practical reasons or otherwise, the Government of Zaire was unable to satisfy those requests. The Government did attempt to facilitate the reproduction of the trial files and the procès-verbaux and transmission to the Special Rapporteur. However, owing to their volume and the need to comply with certain United Nations Secretariat procedures, as well as to a change in circumstances in Zaire, the Special Rapporteur ultimately was unable to receive copies of those documents. Nevertheless, the Special Rapporteur did receive information from individuals and non-governmental organizations familiar with the proceedings of the trial and, on this basis, he was able more fully to appreciate the judgement rendered by the Supreme Court in the matter State v. Koyagialo *et al*.

13. Should the opportunity present itself, the Special Rapporteur would hope to be able to review the trial files and the procès-verbaux and to add to his anticipated consultations with the Government of Zaire, as well as to his forthcoming report to the Commission on Human Rights, such comments as may be useful to the Government in its response to his aforementioned request.

14. It is uncontested that, as a result of the events which took place on the UNILU campus during the period 8-12 May 1990, at least one student was killed and numerous others injured. It is also uncontested that significant material damage resulted from these events. What has been contested is whether more than one person lost his life and whether and to what extent action or wilful failure to act on the part of government authorities, provincial and central, provoked or directed those events.

15. In part, a discovery of the facts may be sought by reference to the *Report of the Commission of Inquiry established by the Regional Assembly of Shaba* (*Rapport de la Commission d'enquête designée par l'Assemblée regionale du Shaba* [*Regional Assembly Report*]), the *Report of the Parliamentary Commission of Inquiry on the events which took place on the campus of the University of Lubumbashi* (*Rapport de la Commission d'enquête parlementaire sur les événements survenus au campus universitaire de Lubumbashi* [*Parliamentary Commission Report*]) and the judgement of the Supreme Court of Zaire in the matter State v. Koyagialo *et al*. (Judgement). Particularly when read in the light of the information received by the Special Rapporteur, these documents suggest to the Special Rapporteur that a number of avenues remain to be

explored and that a number of persons remain to be questioned in connection with the events of 8-12 May 1990 in order to understand both the factual circumstances surrounding the events and the responsibility which should be attributed to persons implicated therein. A number of these open questions will be touched upon in the Special Rapporteur's exposition of the circumstances surrounding the events on the campus of the University of Lubumbashi during the period 8-12 May 1990, and his analysis of the investigative findings relating thereto.

I. LEGAL JUSTIFICATION OF THE MANDATE OF THE SPECIAL RAPPORTEUR ON SUMMARY OR ARBITRARY EXECUTIONS TO THE COMMISSION ON HUMAN RIGHTS AND ITS RELATIONSHIP TO THE MISSION OF THE SPECIAL RAPPORTEUR TO ZAIRE

A. Legal justification of the mandate of the Special Rapporteur on summary or arbitrary executions to the Commission on Human Rights

16. The mandate of the Special Rapporteur on summary or arbitrary executions was established by Economic and Social Council resolution 1982/35 of 7 May 1982. The mandate most recently was extended for another two years by Commission on Human Rights resolution 1990/51 of 6 March 1990 as approved by Economic and Social Council decision 1990/233 of 25 May 1990.

17. The standards listed below form the legal justificaton of the mandate of the Special Rapporteur: they have been cited in resolutions or decisions of the General Assembly, the Economic and Social Council and the Commission on Human Rights. The articles bracketed indicate the principal provisions invoked by the Special Rapporteur in the execution of his mandate.

1. Universal Declaration of Human Rights (art. 3); General Assembly resolution 217A (III) of 10 December 1948.

2. International Covenant on Civil and Political Rights (arts. 4, 6, 7, 9, 10, 14, 15); General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 23 March 1976.

3. Standard Minimum Rules for the Treatment of Prisoners, Economic and Social Council resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

4. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 3452 (XXX) of 9 December 1975.

5. Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979.

6. Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984.

7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987.

8. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly resolution 43/173 of 9 December 1988.

9. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1989/64 of 24 May 1989.

10. Effective prevention and investigation of extra-legal, arbitrary and summary executions, Economic and Social Council resolution 1989/65 of 24 May 1989.

11. Basic Principles on the Use of Force and Firearms by Law Enforcement officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 27 August-7 September 1990).

18. Where it is possible to do so, the Special Rapporteur cites instances of summary, arbitrary or extrajudicial executions by reference to the categories he has established under his mandate. These are grounded in the aforementioned law and standards. Their elaboration has developed out of practice, that is to say, by way of the cases which the Special Rapporteur has treated over the past decade. The categories are as follows:

1. Allegations of actual or imminent executions

    1.1 Without a trial

    1.2 With a trial but without respecting the minimum standards for fair trial

2. Allegations of deaths which take place

    2.1 As a result of torture or cruel, inhuman or degrading treatment or punishment during detention

    2.2 As a result of assault or abuse of force by police, military or other governmental or para-governmental forces

    2.3 As a result of assault or abuse of force by paramilitary groups under official control

    2.4 As a result of assault by individuals or paramilitary groups not under official control, but acting with official collusion or acquiescence

    2.5 As a result of assault by individuals or groups of individuals not under government control

3. Allegations of death threats made by

    3.1 Members of police, military or other governmental or para-governmental forces

3.2 Individuals or paramilitary groups under official control or acting with official collusion or acquiescence

3.3 Individuals or groups of individuals not under government control

19. When, at the request of a Government, the Special Rapporteur carries out an _in situ_ examination of the phenomenon of summary or arbitrary executions in a country, he analyses the information gathered by reference to the above-cited standards and categories. Such was the case in the instance of the mission of the Special Rapporteur to Zaire.

B. _Relationship of the legal justification of the mandate of the Special Rapporteur to his mission to Zaire_

20. Of particular relevance to the Special Rapporteur in the consideration of the information he received in connection with his mission to Zaire are the following standards: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Code of Conduct for Law Enforcement Officials, Economic and Social Council resolution 1989/65 on the effective prevention and investigation of extralegal, arbitrary and summary executions and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. _2_/

21. It should be noted that Zaire has ratified the International Covenant on Civil and Political Rights. Article 6 of the International Covenant provides that "Every human being has the inherent right to life, [that] [t]his right shall be protected by law [and that] [n]o one shall be arbitrarily deprived of his [or her] life". It should be noted further that the Constitution of the Republic of Zaire provides that "[e]veryone has the right to life and to physical integrity [and that] no one shall be put to death except in cases provided for by law and in the forms prescribed by law". _3_/

22. Based upon the information he has received, the Special Rapporteur has reason to believe that the following categories of the phenomenon of summary, arbitrary or extrajudicial executions may be brought to the attention of the Government of Zaire in connection with the loss of life and threats against the life and physical integrity of persons resulting from the events which transpired on the campus of the University of Lubumbashi during the period 8-12 May 1990: allegations of deaths which took place as a result of assault or abuse of force by police, military or other governmental or para-governmental forces (category 2.2), and as a result of assault or abuse of force by paramilitary groups under official control (category 2.3), together with allegations of death threats made by members of police, military or other governmental or para-governmental forces (category 3.1), by individuals or paramilitary groups under official control or acting with official collusion or acquiescence (category 3.2), and by individuals or groups of individuals not under government control (category 3.3).

23. It would appear to the Special Rapporteur, based upon the information he has received and his consideration of the _Regional Assembly Report_, the

Parliamentary Commission Report and the Judgement, and taking into account the aforementioned standards, that the Supreme Court of Zaire, in pronouncing upon the circumstances surrounding and the responsiblity for the events which transpired on the campus of the University of Lubumbashi during the period 8-12 May 1990 in the matter, State v. Koyagialo et al., may not have had at its disposal all such information as was necessary to enable it fully to determine the extent to which responsibility should be attributed to certain civil and military authorities, both at the level of Shaba province and at the national level, in addition to those convicted and sentenced by the Judgement.

24. In particular, based upon the information he has received and his consideration of the Regional Asssembly Report, the Parliamentary Commission Report and the Judgement, the Special Rapporteur, in connection with the events of 8-12 May 1990, would suggest that questions remain with regard to the occurrence of and the attribution of responsibility for:

(a) The failure of certain law enforcement officials and other law enforcement officials, whose precise identity is unknown to the Special Rapporteur but who are believed to have been members of the Zairian Armed Force, the Civil Guard and certain elements of the special security forces, to comply with the principles set forth in the Code of Conduct for Law Enforcement Officials including, but not limited to, the obligation to respect and protect human dignity and uphold the human rights of all persons, to respect the law and prevent and oppose any violations of the law, and to report any such violations to their superior authorities, to other appropriate authorities or to organs vested with reviewing the remedial power; 4/

(b) The failure of certain responsible government officials and other officials, whose precise identity is unknown to the Special Rapporteur, but who are believed to have been members of the Zairian Armed Forces, the Civil Guard and certain elements of the special security forces, to comply with the principles set forth in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials including, but not limited to, the obligation to adopt and implement rules and regulations on the use of force and firearms by law enforcement officials, to ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under the law, to establish reporting and review procedures for all incidents relating to injury or death caused by the use of force and firearms by law enforcement officials and to ensure that such process is available to exercise jurisdiction in appropriate circumstances and, in cases of death or serious injury, or other grave consequences, to provide that a detailed report be sent promptly to competent authorities responsible for administrative review and judicial control, to ensure that persons affected by the use of force and firearms or their legal representatives have access to an independent process, including a judicial process, and further to ensure that superior offices are held responsible if they know, or should have known, that law enforcement officials, under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use;

(c) Considering, among other things, the deficiencies noted with regard to compliance with the principles set forth in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and

Firearms by Law Enforcement Officials, the failure of the Government to satisfy fully its obligations under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to ensure respect for the right to life of every human being, to ensure that this right is protected by law, and to ensure that no one is arbitrarily deprived of his or her life;

(d) Considering, among other things, the deficiencies noted with regard to compliance with the principles set forth in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the failure of the Government to satisfy fully its obligations under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the principles set forth in the resolution of the Economic and Social Council on the effective prevention and investigation of extralegal, arbitrary and summary executions to investigate, to prosecute, to impose sentences and to ensure that those sentences are carried out against persons responsible for failing to guarantee respect for the right to life.

25. Finally, when viewing the relationship between the legal justification of his mandate and the information he received and analysed in connection with his consideration of the events which took place on the campus of the University of Lubumbashi during the period 8-12 May 1990, the Special Rapporteur wishes to emphasize that, given the inability of the Government of Zaire, for practical reasons or otherwise, to furnish him with a number of the documents which would have assisted him in the preparation of his report, the practical constraints under which he operated both during his mission and in the preparation of his report, and the length of time which had transpired between the events in question and his mission, his role is limited to communicating by way of his report such information as appears to him to be credible and rendering such analysis as he believes that information will bear, taking into account the totality of the information at his disposal.

II. HISTORICAL OVERVIEW, PROVINCIAL STRUCTURES, THE STATE SECURITY APPARATUS AND THE EVENTS ON THE UNIVERSITY OF LUBUMBASHI CAMPUS

26. In order to understand the events which transpired on the campus of the University of Lubumbashi during the period 8-12 May 1990 more completely, it is essential to grasp the larger background against and context within which they occurred. A brief historical overview, and a description of the provincial structures and the State security apparatus 5/ and their relationship to the events on the University of Lubumbashi campus therefore precedes the narrative of events that follows in section III.

A. Historical overview

27. From the time of the founding of the Mouvement populaire de la revolution (MPR) on 17 April 1966 until President Mobutu's speech nearly a quarter of a century later, all opposition political activities were suppressed or prohibited, in fact or in law. The party's ideology, "Mobutism", declared in 1967, ensured a highly centralized form of political, social and economic organization at all levels of society. In 1970, the MPR

was declared the sole legal political party and in 1972, its structures were formally grafted onto those of the Government, effectively collapsing executive, legislative and judicial authority.

28. In 1974, this fusion was legitimized with the issuance of the Revised Revolutionary Constitution: Zaire became the Party-State of the MPR. Between 1973 and 1975, a policy of "Zairianization" or nationalization, of the strategic economic sectors further consolidated economic and, hence, political power: a considerable bureaucracy was needed to oversee the consolidation process. Its staff depended directly upon the Office of the President, thus ensuring hierarchical loyalty to Kinshasa in structures which regulated many of the key aspects of daily life.

29. The two "Shaba" wars of 1977 and 1978 prompted President Mobutu to essay a policy of political liberalization. Among the variety of techniques he employed between the years 1977 and 1980 was the introduction of a legislative council entrusted with auditing the activities of the Executive Council and the heads of parastatal companies. Lacking enforcement power, the investigations of the Legislative Council, in practical terms, yielded few results. The process collapsed in late 1979 when a number of legislators, members of the Legislative Council, demanded an investigation into the killing of over 200 diamond miners in the province of East Kasai.

30. When certain members of the Legislative Council, among them Mr. Tshisekedi wa Malumba, refused to sign a letter confirming their support for the Government's version of the massacre, President Mobutu accused them of conspiracy, renewed his attack on the Legislative Council and flatly dismissed the need for an independent investigation. In large part in reaction to these events, President Mobutu ordered that the Legislative Council should no longer be permitted to question the conduct of government officials without the prior approval of the President. Some members of the Legislative Council refused to accede to President Mobutu's injunctions, responding to the President in the form of a letter.

31. As a result, 13 of them were arrested and their parliamentary immunity was suspended. They were called before the Disciplinary Committee of the Central Committee, which deprived them for a period of five years of their civil and political rights. The three principal drafters of the letter 6/ were banished to the interior. In early 1982, these former parliamentarians, together with a number of other persons, formed a new political party, the Union for Democracy and Social Progress. Under Zairian law, the party was illegal. Eighteen of its leaders were arrested, convicted of violating the Constitution and sentenced to 15 years in prison. In 1983, they were released as part of a general amnesty.

32. Among the most well-known of the UDPS founders and leaders were Mr. Tshisekedi wa Mulumba, a prominent politician during the early years of the Second Republic and Mr. Lihua Ebua, the first President of the Supreme Court who, during his student days, had pressed the colonial administration to allow Africans to study law. Even after the so-called Gbadolite Accords, by which a number of opposition figures were co-opted into rejoining the MPR, Messrs. Tshisekedi and Lihau remained in the opposition. Both have been involved in recent attempts to democratize Zaire.

33. Two years ago, President Mobutu signalled another apparent shift in the direction of the State with his speech of 14 January 1990. With an eye to the events unfolding in the former Eastern Bloc States and demonstrating a marked concern for the fate of his close friend and ally, former Romanian dictator Ceaucescu, President Mobutu rejected any notion of liberal economic restructuring or perestroika, and multi-party democracy. He maintained that the "MPR is neither the right, the left or the centre; it is, rather, 'authentic'".

34. Following a cabinet reshuffle, President Mobutu launched upon a two-month tour of the country with the declared aim of meeting citizens and citizens' groups and receiving their written comments. It has been reported that, in many cities, citizens rallied somewhat less than spontaneously to meet with the President. Among the 6,128 memoranda received, the most influential and widely publicized, that submitted by Zaire's 12 Roman Catholic bishops on behalf of the Conference of Roman Catholic bishops, was rejected by the President. The bishops' memorandum called, among other things, for a national conference with the aim of preparing a new constitution based on the model of the 1964 Luluabourg Constitution.

35. By the middle of March 1990, calls for change in Zaire grew less muted and more widespread. Although President Mobutu signalled his displeasure with such open discontent, he nevertheless went forward with his plans to announce the commencement of the Third Republic by his speech of 24 April 1990. 7/ Among the most significant changes named by the President in his speech were plans to bring the single-party State to an end by introducing three-party democracy, to depoliticize public services, the armed forces and the security services, to dissolve key party organs, such as the Central Committee and the Political Bureau, and to allow persons once again to use western titles and to wear western dress.

36. The President announced his further intent to ensure the rehabilitation of the executive, the legislature and the judiciary, but proposed no concrete means for doing so. President Mobutu maintained for himself responsibility for national defence and territorial security. Finally, in announcing the dissolution of the single-party State, President Mobutu, inadvertently or no, threatened his constitutional status as Head of State.

37. Within days of the speech, four new or revived political parties appeared, including the UDPS. When on 30 April 1990 leaders and supporters of the UDPS gathered at the Kinshasa residence of Mr. Tshisekedi to discuss future strategy, State security forces arrived and violently dispersed the gathering. At least three persons were killed and several others wounded, among them Mr. Tshisekedi. Shortly thereafer, MPR members who had announced the formation of a new party withdrew again into the MPR ranks.

38. Against this background, President Mobutu profited from the occasion of his scheduled address to the Legislative Council to correct some of the "misunderstandings" which had arisen as a result of his earlier speech. These he attributed to ill-will, intimating further that the transition to a three-party system would, necessarily, occur gradually "[i]t must be understood that as of today, there do not yet exist any political parties, the law which will regulate them being still in preparation". 8/

39. Given this state of affairs, President Mobutu recommended that future leaders of political parties gather informally with their friends during the transition period to accomplish whatever planning they felt was appropriate. The President then set forth his plan for a transition to democracy: it comprised two phases, the first of which had six stages. The first phase was scheduled to run until 1 May 1991. The second phase included elections for the presidency, as well as for the national and provincial assemblies. Presidential elections would take place sometime prior to 4 December 1991, assembly elections sometime in 1992.

40. Finally, President Mobutu announced a restructuring of the security forces and the replacement of his security adviser. These changes were being undertaken during the period of the events in question.

B. Provincial structures, the State security apparatus and the events on the University of Lubumbashi campus

41. To better understand the dynamics of the events which transpired on the University of Lubumbashi campus between 8 and 12 May 1990, it is useful to describe in brief the provincial structures and the State security apparatus in place during the time of those events. Subsection 1 below concentrates on the interaction between the President of the Republic and provincial structures, on the one hand, and the provincial governor and provincial structures on the other hand, in law and in fact. Subsection 2 resumes in brief the State security apparatus, including its operation at the level of Shaba province during the period of the events in question. It describes the interaction between the provincial civilian and military powers, in law and in fact.

42. Finally, it should be noted that the constitutional status of Zaire was somewhat ambiguous during the period of the events in question. By his 24 April 1990 speech, President Mobutu announced the forthcoming establishment of the Third Republic. Changes proposed included the termination of the Party-State and provision for a system of three-party democracy. However, as the President pointed out in his 3 May 1990 address to the Legislative Council, the law needed to implement his announced changes was "still in preparation". In fact, the Constitution of Zaire was not formally amended until 5 July 1990. 9/ As a legal matter, therefore, the MPR apparently preserved its official status, as well as its organs, until that time. Among these organs was the Youth Movement of the MPR, the JMPR. 10/

1. Provincial structures

(a) The President of the Republic and provincial structures

43. In law, the President of the Republic bore jointly the titles of Chief of State and President of the MPR the sole legal party of the State. 11/ As such, he was the central control and decision-making organ of the Party. The President presided over the Congress, the MPR Central Committee, the Political Bureau and the Executive Council (Cabinet). On his own authority, the President appointed and removed all of the major officials of the other Party organs. The President of the Party-State also was the Supreme Commander of the Zairian Armed Forces and headed the Supreme Council of Defence. 12/

44. Centralization of command was the operative principle of the MPR Government. 13/ The pivot of this centralization was Mr. Mobutu Sese Seko, President of the Republic and President of the Party, in whose Office all authority finally reposed. According to sources of the Special Rapporteur who had directly served the President, this ultimate information-collection and decision-making point was known as "la Présidence". According to those same sources, reference to the "central authorities" was synonymous with ultimate reference to "la Présidence" or, in other words, to President Mobutu. Accordingly, when the Special Rapporteur uses either the term "Présidence" or the term "central authorities", he is referring to the Office of the President and to the appropriate component element or elements of the central authorities, as well as to President Mobutu's ultimate decision-making power.

45. One of the practical consequences of, and essential supports for, the principle of centralization was that each of the superior provincial civil and military authorities possessed the communications equipment necessary to transmit information to and receive orders from the central authorities. According to information received by the Special Rapporteur, including from former members of various expressions of the State security apparatus, the purpose of maintaining non-hierarchical lines of communication was to encourage mutual monitoring and informing between and among services. The Présidence then could, among other things, cross-check and analyse information reaching it from the various services.

46. An excerpt from a journal published by the training school of MPR cadres explains to students undergoing indoctrination into the functioning of the State how the role enjoyed by the President as head of this centralized system is to be appreciated:

> "'Why has the President of the MPR become an organ?'
> the militant mothers would ask.
>
> "We know that, since 1974, the MPR has been the institution par excellence of Zaire. That it is the Zairian nation organized politically. And that the Conclave of the Political Bureau wishing to reaffirm the primacy and guiding role of the MPR in the edification of the nation and to see that the principle of unity of command is applied, has remade the 'President' into an organ of the MPR, to be sure, the number one organ, better still the central organ of decision-making and control over the activities of the Party-State.
>
> "Hear us well! This organ is not the number one organ for reasons of mere hierarchy. Its position as the supreme organ has real significance: it is the supreme organ because it represents the Nation. It oversees the proper functioning of all the organs, it presides over the Congress, the Central Committee, the Political Bureau, the Executive Council, it is the Chief of the Executive power: it determines and conducts the policy of the State, establishes the programme of action of the Executive Council, oversees its application. It is the guarantor of national independence and of territorial integrity, it is the Supreme Commander of the Armed Forces. It is the guarantor of the independence of the Judicial Council. It embodies, therefore, all of the responsibility of the Party Chief, the Government Chief, the President of the Republic.

> "It represents the pivot of all of modern Zairian society. It is the keystone of our entire political system.
>
> "...
>
> "The President of the MPR holds in his hands all of the reins, takes all of the major decisions ... he is like the Roman principate.
>
> "...
>
> "[T]he presidential power of the MPR is that special something which surpasses a mere presidency. It is a power characterized by a totality of unity: it is identical: it embodies an originality of the organization of political power, surpassing the ancient Western notion of separation of powers espoused by Montesquieu, in order to privilege the division of political labour in which members of all socio-professional categories and all social strata meet in an immense song of praise of participation in the Salongo.
>
> "It follows, therefore, from this evolution that the President under law of the MPR, President of the Republic, supreme organ of the MPR, central organ of decision-making and of control over Party activities, is the driving force behind all of the other organs which exercise power concurrently with it or are its auxiliaries." 14/

47. According to information received by the Special Rapporteur and, in particular, from those who had at one time served in various expressions of the State security apparatus, the aim of centralization of all power with the Présidence was to ensure the inviolability of the President or, more precisely, of the person of the President, the keystone of the entire Zairian political system.

48. Information relating to matters touching upon the so-called internal and external security of the State was gathered at all levels, e.g. the lives of government officials, 15/ the daily lives of Zairian citizens and the lives of students on the campuses of educational institutions, partially processed and funnelled to the central authorities, where a final analysis and processing took place. Decisions to correct aberrations of proper conduct would then be translated into "action", that is to say, reprisals.

49. In principle, provinces enjoyed some autonomy. However, legal expressions of decentralization of power, for example those mandated by Ordinance-Law 82-006 of 25 February 1982 which addressed, among other things, the attributions of a provincial governor, were valid in fact only in so far as their prescriptions could be read as being in harmony with existing practice. The actual degree of independent action of a provincial governor was circumscribed by the largely unwritten mandate of centralization. Yet incontestably, in terms of the law, responsibility for a failure to maintain public order or to forestall or to correct an abuse of police powers within the province lay with a provincial governor.

50. In so far as the provincial governor was the local expression of the central power, attribution of that responsibility was just in law. However,

in so far as provincial representatives of the various parts of the State security apparatus also were independently communicating with the central authorities and were receiving instructions from those authorities, the capacity of the local expression of the central power to execute a policy designed to achieve his or her functions mandated under law was hindered.

51. The Special Rapporteur has received information which demonstrates that parallel control and decision-making structures did exist at the provincial level in Shaba province. That is to say, while the provincial governor certainly did serve as a collection point for information relating to the so-called security of the State, and was responsible for channelling that information to the central authorities; at the same time, other provincial representatives of the State security apparatus had the capacity to communicate independently with the central authorities and did so. Moreover, at the national level, each of the commanders of the various security forces jealously guarded his own turf. 16/

52. Given the above, the Special Rapporteur can only conclude that a determination of the factual circumstances surrounding the events which took place on the campus of the University of Lubumbashi on 8-12 May 1990 and the attribution of responsibility therefor, at the provincial and the national levels, including the President of the Republic, demands a far more careful and detailed instruction by the judicial authorities, including the Prosecutor General, in the matter State v. Koyagialo et al. than appears to have been the case.

(b) The provincial governor and provincial structures

53. In law, the province was "a decentralized administrative entity, endowed with a legal personality". 17/ The organs governing that region were three: the Provincial Committee of the MPR, the Regional Assembly and the Provincial Chief of the MPR and Governor of the Province. 18/ The provincial head was characterized as follows:

> "The Provincial Chief of the MPR and Provincial Governor is at once the representative of the Executive Council and the provincial authority. As such, he or she assumes responsibility for the proper functioning of State services in the province and for ensuring that his or her jurisdiction is properly administered." 19/

54. Among the functions attributed to the provincial head were:

(a) Oversight of the execution of the laws, regulations and decisions of the superior authority or of the Regional Assembly; 20/

(b) The maintenance of public order in the province, for which purpose the units of the National Gendarmerie posted to the province are at his or her disposal; 21/

(c) In his or her capacity as representative of the Executive Council, establishment and execution of the budget and provincial economic plan, including the collecting of taxes and like duties and the provincial development plans, with the approval of the Regional Assembly; 22/

(d) Exercise of control over all of the administrative entities of the province, in accordance with the conditions established by law and regulations; 23/

(e) In case of emergency, the provincial governor may sanction those who have violated the police regulations and either imprison or fine the violators, although the term of imprisonment is limited to 15 days and the fine to 100 zaires (a unit of currency) 24/ [a rather negligible amount];

(f) He or she represents the province in justice, in accordance with the law. 25/

55. Juxtaposed with these expressions of decentralized independence was the fact that the provincial Governor and Chief of the Party was "named by the President of the MPR and President of the Republic, who establishes his status (emphasis added)". 26/ Under the Constitution, the President was the central control and decision-mkaing organ of the MPR. 27/ As such, he was empowered, on his own authority to appoint and remove all major officials of the party organs. In so far as the provincial governor also was the provincial party president, he or she served at the will of the President.

56. The provincial governor was then, in law as well as in fact, at least as much a personal representative of and dependent upon the President as he was a "decentralized" and independent entity. The training manual of MPR cadres reaffirms this point when it states that "[i]f, unquestionably, the provincial governors enjoy considerable powers, their hands are not totally free ... because of the centralization of control". 28/ In addition, according to information received by the Special Rapporteur, during the course of the parliamentary debates concerning the Parliamentary Commission's report to that body in mid-June 1990, one former provincial governor, Mr. Malumba Mbangula, announced that during his tenure as Governor of Lower Zaire, he was obliged to make contact with Kinshasa twice daily: once to the Ministry of the Interior and once with the office of the President (La Présidence).

57. Reading together the sections of the applicable law treating the competencies of the provincial governor and those of the regional assembly, one may draw the conclusion that, even in law, primary responsibility for the administration and oversight of that key domain of State power, namely, "Internal and External Security", lay with the Présidence, and that provincial exercises of control over those domains would have been accorded the provincial governor in accordance with his "status" as established by the President. 29/

58. The result was an overlapping of competencies and a multiplicity of policy execution centres situated at the provincial and the national levels. According to information received by the Special Rapporteur, practice was as confused as the law.

59. As the foregoing demonstrates, on the one hand, the stated intent of the law was to decentralize power from the central authorities, i.e. the President, to the province. On the other hand, that same law established structures and procedures which ensured that the primary control and decision-making power lay with the President of the Republic. It is the belief of the

Special Rapporteur that such a confusion may well have served as a catalyst for the unfortunate events which occurred on the campus of the University of Lubumbashi during the period 8-12 May 1990. It may help to explain as well the difficulties encountered by investigative bodies in establishing the full scope of responsibility for the loss of life resulting from those incidents.

2. State security apparatus and events on the University of Lubumbashi campus, 8-12 May 1990

60. The State security apparatus operative in Zaire is comprised of a complex tangle of civilian agencies and military units, effective control over which is lodged in the Présidence. As was described immediately above, dispositions dictating "decentralization" are not always clear in law and, according to information received by the Special Rapporteur, in particular from former members of various expressions of that apparatus, certainly do not correspond to practice.

61. At least since President Mobutu ascended to power, the security apparatus has been assured a secure and privileged ranking in the political power structure of the Zairian State. According to information received by the Special Rapporteur, the various expressions of that apparatus have operated de facto to oversee the work of local MPR officials, as well as to verify the complaints of citizens and to channel those complaints to the appropriate central authorities. Since the mid-1980s, the overwhelming majority of persons occupying positions of power in that apparatus have derived from Equateur province and, more particularly, from the Ngbandi tribe, the tribe from which the President of the Republic springs. 30/ The principal security adviser traditionally has been a close confidant of the President.

62. It should be noted that with the expressed aim of "giving [the] services a more human face", President Mobutu announced a series of command changes at the national level in the political power structure of the State by his 3 May 1990 speech. 31/ These changes were in the process of being implemented during the period of the events in question. 32/

63. The following expressions of the State security apparatus of relevance to the events in question are explained more fully below:

(a) Civilian agencies: National Documentation Agency and the National Immigration Agency;

(b) Police and military units: Zairian Armed Forces, National Gendarmerie and Civil Guard; and

(c) Special security units: Military Action and Information Service, the Special Presidential Division and the Special Intervention Force;

(d) University of Lubumbashi campus security apparatus.

On the basis of the information at the disposal of the Special Rapporteur, their relationship to the events which transpired on the campus of the University of Lubumbashi during the period 8-12 May 1990 will be noted.

Further discussion of the same is found below at section III.A. For the reader's reference, a diagram of the de jure command structure of Shaba province is attached as annex II.

(a) Civilian agencies

64. The two primary civilian components of the State security apparatus were the National Documentation Agency (AND) and the National Immigration Agency (ANI). 33/ In law, AND was attributed the following functions:

(a) Researching, interpreting and disseminating information dealing wit political, economic, social and cultural matters, as well as with other matters touching upon the security of the State;

(b) Researching and establishing offences against the security of the State and overseeing the movements of persons suspected of carrying out activities which might endanger the security of the State. 34/

In law, ANI was an agency charged with collecting counter-intelligence ("contre-renseignement"), together with analysing and channelling it to the central authorities. ANI also was attributed other functions. 35/

65. During the period of the events in question, Mr. Ngbanda was in the process of being replaced by Mr. Likulia as the national head of AND. Mr. Goga remained as the national head of ANI. Both Mr. Ngbanda and Mr. Goga derive from the Ngbandi tribe of Equateur province. During that same period, the provincial head of AND was Mr. Uba-Baligbia and the provincial head of AN was Mr. Gata Lebo Kete. The Shaba Provincial Governor and provincial President of MPR was Mr. Koyagialo Ngbase te Gerengbo. All three gentlemen derive from Equateur province. Each of the three was a principal defendant i the matter State v. Koyagialo et al.

66. In practice, the provincial offices of AND and ANI were at once subordinated to the provincial governor and reported independently to the central authorities. According to information received by the Special Rapporteur, the two agencies exercised broad powers in the execution of their mandates and, in connection with the same, operated an extensive network of prisons and detention centres throughout the country.

67. In Shaba province, the two primary agencies charged de jure with intelligence-gathering and analysis, as well as with exercising police powers on the basis of that intelligence information, were the provincial offices of AND and ANI. According to information received by the Special Rapporteur, practice corresponded with law in this respect.

68. A third structure engaged in intelligence-gathering was the campus security apparatus at the University of Lubumbashi. 36/ The apparatus also contained an enforcement arm. Although rank-and-file membership was ethnically mixed, each of the various components of the apparatus included persons derived from the Ngbandi tribe of Equateur province. The head of the enforcement arm of the campus security apparatus usually derived from the Ngbandi tribe of Equateur province. According to information received by the Special Rapporteur, members of the campus security apparatus furnished the

intelligence information they gathered to, among others, ANI and AND. The heads of these agencies then channelled that information to the central authorities.

69. In theory, as between AND and ANI, the more influential of the two should have been the AND. It would appear from information received by the Special Rapporteur that, in practice during the period of the events in question, ANI exerted a more decisive influence over the course of events on the UNILU campus. Indeed, according to one source who worked closely with the Shaba provincial authorities, it was the ANI Provincial Director, Mr. Gata, who de facto assumed control for the centralization of provincial intelligence, although *de jure* this role was reserved for the AND Provincial Director, Mr. Uba.

(b) *Police and military units*

70. The police and military units posted to Shaba province which were, according to the information at the disposal of the Special Rapporteur, in some way involved in the events which took place on the University of Lubumbashi campus during the period 8-12 May 1990 were:

(a) The Zairian Armed Forces (FAZ), under the command of Colonel Lokiyo Lianza;

(b) The National Gendarmerie (*Gendarmerie nationale*), under the command of Lieutenant Colonel Takula;

(c) The Civil Guard (*Garde civile*), under the command of Major Lokombe.

71. Within the First Military Region, covering Shaba province, the commander of the Ninth Military Circumscription (abbreviated locally as the 9ème CIRCO or CIRCO) was responsible for troops of the FAZ posted in and around Lubumbashi. Colonel Lokiyo Lianza, commander of CIRCO was, at the time of the events in question, also in acting command of the entire First Military Region covering Shaba province. 37/ Colonel Lokiyo derives from Equateur province.

72. On the basis of the information received by the Special Rapporteur, it would appear that, of the two components of Colonel Lokiyo's consolidated status, that of Regional Commander was more important to the unfolding of the events in question than was that of CIRCO commander. As a matter of law, the Regional Commander reported to the chief civilian authority of the province, in this case, the Governor of Shaba province, Mr. Koyagialo.

73. As Regional Commander, Colonel Lokiyo would have been bound to report to and to take orders from Governor Koyagialo concerning the disposition of units of FAZ troops of the Ninth Military Circumscription, and of the units of the National Gendarmerie and the Civil Guard posted in and around Lubumbashi. While the Civil Guard was linked hierarchically neither to the Regional Commander nor to the National Gendarmerie, 38/ it would appear that, during the May 1990 events, coordination between the Civil Guard commander and the Regional Commander was close and constant and that, for operational purposes, the Civil Guard was placed temporarily under the command of the Regional Commander.

(i) Zairian Armed Forces

74. As mentioned above, the Zairian Armed Forces (FAZ) were subordinated to the President of the Republic, in his capacity as Supreme Commander of the Zairian Armed Forces. FAZ is composed of three units: land, sea and air; it also had operating within it elite strike forces. As described immediately above and as regards Shaba province, under law the CIRCO commander reported to the Regional Commander of the First Military Region. In so far as Colonel Lokiyo was serving as the Regional Commander during the period of the events in question, this hierarchical distinction did not exist.

75. Known to be of interest to the events of 8-12 May 1990 are the following members of FAZ who were posted in and around Lubumbashi: Colonel Lokiyo Lianza, Commander of the First Military Region and of the 9ème CIRCO, Colonel Mokonzi, commanding officer of the 21st Infantry Brigade, and Major Bayenyama Makabe, commanding officer of the 211th Infantry Battalion. Of the three, only Colonel Lokiyo was a defendant in the matter State v. Koyagialo et al. It would appear as though neither deposition nor testimonial evidence was taken of Messrs. Mokonzi and Makabe.

(ii) National Gendarmerie

76. In law, the National Gendarmerie, a form of militarized police, was attributed the following functions:

> "The Gendarmerie is a force established with the aim of overseeing public security and ensuring the maintenance of order and the execution of the laws.
>
> "Continual and repressive oversight constitute its primary function." 39/

In practice, the functions exercised by the Gendarmerie corresponded to its legal mandate. Once a police force primarily accountable to provincial authorities, in 1972 President Mobutu altered its mandate, subordinating it to FAZ and making it accountable to national authorities. At the time of the events in question, the National Gendarmerie was headed by General Bolozi, the brother-in-law of the President.

77. Under the circumstances prevailing in Lubumbashi during the period of the events in question and by virtue of its legal mandate, the Civil Guard supplanted the Gendarmerie in the execution of all so-called ordinary missions. Hierarchically, in Shaba province, the Gendarmerie reported through the Regional Commander to the provincial governor. Information received by the Special Rapporteur leads him to believe that practice corresponded to law in this respect.

78. Known to be of interest to the events of 8-12 May 1990 are the following members of the Gendarmerie who were posted in and around Lubumbashi: Lieutenant Colonel Takula, commander of the Gendarmerie units, Captain Bongonda, commanding officer of the Mobile Brigade, Captain Muanada, commanding officer of the Mobile Battalion, and Sergeant Kongolo Monga, a patrol leader. Captain Bongonda was a defendant in the matter

State v. Koyagialo et al. Captain Bongonda derives from Equateur province. It would appear as though neither deposition nor testimonial evidence was taken of Messrs. Takula and Monga.

(iii) Civil Guard

79. The Civil Guard, a security force similar to a militia, was created in 1984 by the President of the Republic. In law, the Civil Guard was attributed the following functions:

> "The Civil Guard is charged with overseeing public security, and ensuring the maintenance and re-establishment of public order (ordre publique).
>
> "In all areas in which it is located or called upon to act, the Civil Guard assumes responsibility for all ordinary missions attributed to the Gendarmerie.
>
> Units of the Civil Guard, including detached units, are competent at all times to intervene and to act for the purpose of carrying out missions which have been assigned to them. 40/

80. During the period of the events in question, the Civil Guard was headed at the national level by General Kpama Baramoto. General Baramoto derives from the Ngbandi tribe of Equateur province. According to information received by the Special Rapporteur, by 1990, General Baramoto had obtained some control over central military intelligence functions. At the provincial level, Major Lokombe was the commanding officer of the Civil Guard. Major Lokombe derives from Equateur province.

81. Should local practice at the time of the events in question have corresponded to legal prescriptions, the Civil Guard would have been responsible for overseeing public security and for ensuring and re-establishing public order where the latter had been disrupted. According to information received by the Special Rapporteur, local practice very probably was at considerable variance with legal prescriptions in Shaba province in general, and as regards the events of 8-12 May 1990 on the campus of the University of Lubumbashi in particular.

82. In connection with the de jure and de facto relationship between the Civil Guard and the central authorities, the Special Rapporteur refers the reader to the report of the Special Rapporteur on torture, Mr. Peter Kooijmans, to the forty-sixth session of the Commission on Human Rights. 41/ Among other things the Special Rapporteur on torture noted that the Civil Guard was "directly responsible" to the President of the Republic. 42/

83. General Baramoto's younger sister, Ms. Baramoto Koto, allegedly was attacked and, according to some accounts, seriously molested by a group of students on the University of Lubumbashi campus on 9 May 1990 (see section III.A below). According to information received by the Special Rapporteur, the relationship between that attack and the subsequent involvement of special security forces in the incidents of the night of 11-12 May 1990 deserves serious exploration (see section III. A below). The

Regional Assembly Report, the Parliamentary Commission Report and the Judgement did not attempt to establish such a linkage. Based upon the information at his disposal, the Special Rapporteur has reason to believe that the relationship between General Baramoto and the President of the Republic may well explain the reticence on the part of bodies of inquiry, as well as of judicial authorities, including the Prosecutor General of the Republic of Zaire, to explore this issue in detail.

84. Known to be of interest to the events of 8-12 May 1990 are the following members of the Civil Guard who were posted in and around Lubumbashi: Major Lokombe, commanding officer of the Civil Guard units and Lieutenant Makunga, his operations officer. Major Lokombe was a principal defendant and Lieutenant Makunga a minor defendant in the matter State v. Koyagialo *et al*. It would appear as though neither deposition nor testimonial evidence was taken of any other Civil Guard officers.

(iv) Special security forces

85. According to information received by the Special Rapporteur, also of interest to the unfolding of events during the period 8-12 May 1990 were the Military Action and Information Service (*Service d'action et de renseignements militaires*, SARM and, possibly, the Special Presidential Division (*Division spéciale présidentielle*, DSP and Special Intervention Force (*Force d'intervention spéciale*, FIS).

86. On the basis of information at his disposal, the Special Rapporteur has reason to believe that two attack groups operated on the UNILU campus on the night of 11-12 May 1990. According to information received by the Special Rapporteur, including from former members of various expressions of the State security apparatus, it was, in fact, SARM which was primarily responsible for one of the attacks upon the UNILU students on the night of 11-12 May 1990. The Special Rapporteur has reason to believe that the SARM unit may have been assisted by members of DSP and FIS. Special security forces were located within FAZ, the Civil Guard and AND. DSP was a separate elite force, the sole task of which was to preserve and protect the President of the Republic and Head of the MPR.

87. According to information received by the Special Rapporteur, the relationship between these various elite forces was not hierarchical in the sense that, for example, a strike force situated in AND was *de jure* subordinated to the "action" component of SARM for a particular operation. Commanders of the elite forces cooperated and formed joint task forces as necessary to secure the physical person and personality of the President, the embodiment of the single Party-State.

88. The scattering of autonomous competencies was bound together operationally by force of personal relationships, reinforced by rigorous indoctrination. Each of the overall force commanders was a close confidant of the President of the Republic and was, in addition, often also bound to him by ethnic or family ties. The political and physical survival of these commanders depended first upon a demonstrated fidelity to the President and second upon their mutual cooperation in the day-to-day expression of that fidelity.

Military Action and Information Service (SARM)

89. SARM was formally established in June 1985. It was subordinated to the President of the Republic, in his capacity as Supreme Commander of the Zairian Armed Forces. Prior to that time, its existence as a military intelligence service was divided between national, provincial and local units. 43/ During the period of the events in question, SARM was headed by General Mahele Bokunga, a close confidant of the President of the Republic. General Mahele derives from Equateur province. According to information received by the Special Rapporteur, General Mahele also emjoyed a close professional and working relationship with General Baramoto, Supreme Commander of the Civil Guard. General Baramoto also derives from Equateur province.

90. As its name suggests, SARM comprised two parts: an action component and an intelligence component. There does not appear to have been a de jure hierarchical link between the intelligence component of SARM and that of AND and of other intelligence-gathering components situated within the various expressions of the State security apparatus. Yet, according to information received by the Special Rapporteur, all intelligence information relating to the security of the State, that is to say, information suggesting a threat to the "supreme organ" of the Party State 44/, President Mobutu, eventually was centralized within SARM prior to onward dispatch to the Présidence.

91. The elite strike force formally attached to SARM was, according to information received by the Special Rapporteur from former members of various expressions of the State security apparatus, a sort of floating force. In practical terms, this meant that members of units therefrom could be attached to or combined with members or units of elite forces subordinated to other expressions of the State security apparatus in order to accomplish a specific task.

Special Presidential Division (DSP)

92. DSP was, as its name suggests, the elite personal guard of President Mobutu. During the period of the events in question, DSP was headed by General Nzimbi. General Nzimbi has long enjoyed a close personal and professional relationship with the President of the Republic. General Nzimbi derives from the Ngbandi tribe of Equateur province.

93. It should be noted that, because of the Division's visibility and symbolic importance, the term "DSP" often was popularly used as a shorthand term to characterize any security force called upon by the Government to intervene violently to suppress activity deemed subversive. Many of the written and oral student testimonies reviewed by the Special Rapporteur refer to the DSP 45/ as being the strike force responsible for the human and material destruction perpetrated on the UNILU campus on the night of 11-12 May 1990.

94. The average UNILU student, of course, was not privy to the intricacies of the State security apparatus. By contrast, testimony received from persons who claim to have participated in an attack or to have learned of an attack in the course of their duties with the security apparatus, either referred to

SARM as the force responsible for that attack or were careful not to characterize that force by name, even upon questioning designed to elicit that information.

Special Intervention Force (FIS)

95. FIS was an elite strike force formerly attached to AND. Reportedly, it has been detached from AND and resubordinated to DSP. The Special Rapporteur is not in a position to know whether the reassignment took place prior to or following the events in question.

(c) University of Lubumbashi campus security apparatus

96. Given what has been detailed above concerning the all-pervasive nature of the State security apparatus, it is not surprising that the campuses of all universities and institutions of higher education also contained an expression of that apparatus. 46/ One wing of the campus security apparatus was organized under the auspices of the JMPR, the youth arm of the State Party, the MPR. A clandestine parallel security structure composed largely of Equatorial pseudo-students also operated on the campus. Finally, professors often were placed on campuses in order to furnish the authorities with information; 47/ others were induced or coerced into doing so.

97. Like its civilian counterparts, the JMPR campus apparatus contained an intelligence-gathering and an enforcement component. Responsibility for the former was dispersed among the heads of the various sub-units of the campus JMPR and centralized with the overall JMPR head and with the head of the JMPR enforcement arm, the Student Brigade (Brigade estudiantine).

98. According to information received by the Special Rapporteur, the ethnic composition of the JMPR student government was mixed. Nevertheless, the authorities ensured that certain key positions were held by students from Equateur province, such as, for example, the head of the Student Brigade, the Brigade Commander. In groupings incorporated by JMPR and organized along regional lines, such as, for example, the mutuels, the authorities ensured that an Equatorial infiltrator was among the membership ranks.

99. The Student Brigade was organized in the form of a military platoon. Reportedly, on a campus the size of the University of Lubumbashi, the unit comprised between 50 and 75 students. According to information received by the Special Rapporteur, the Brigade members were dispersed among the various dormitories or blocks, although the heaviest concentration of Brigade members were in the blocks at principal access points of the campus, namely, blocks I, IV and X on the upper campus and blocks A, J and E on the lower campus. The Brigade Commander usually was a student who derived from the Ngbandi tribe of Equateur province. In principle, members of the campus JMPR structure were elected by popular vote; in practice, their selection was somewhat more controlled.

100. The campus JMPR consisted of an overall head or President, the Dirigeant, together with the heads of between five and eight sub-units, each responsible for organizing and overseeing various aspects of student life, e.g. sport, culture, individual departmental groupings. In addition, so-called mutuels,

regionally based groupings, were embraced in the JMPR structure. Among other things, the heads of these units and groupings or, in certain cases, student infiltrators, were responsible for gathering information on the activities and movements of each of its members and reporting those both to the Dirigeant and to the Brigade Commander. The Dirigeant also reported his or her findings to the Brigade Commander.

101. The Brigade members were responsible de jure for guaranteeing the security of the students. De facto the Brigade members were a component of the State security apparatus which operated to ensure that nothing threatened the political viability of the President of the Republic. Accordingly, the Brigade members spied upon the movements and activities of their colleagues and reported these daily to the Brigade Commander. In turn, the Brigade Commander reported daily to the so-called Information Office. This office processed that information and forwarded it to AND for onward dispatch to the central authorities.

102. According to information received by the Special Rapporteur, in addition to this formally recognized campus security structure, another parallel structure operated on the Zairian campuses. This entity was unnamed, but well-known and feared. It was comprised of pseudo-students, largely from the Ngbandi tribe of Equateur province. Like their Brigade counterparts, they too were scattered among the student blocks, the largest concentration of them being lodged in the aforementioned dormitories. These pseudo-students were highly trained in intelligence-gathering and fighting techniques. Reportedly, they were relatively easy to identify owing to their sub-standard academic performance. The members of this parallel network also spied on their colleagues and followed procedures analogous to those described above in connection with the Student Brigade. The result was a tangle of intelligence-gathering and enforcement mechanisms operating in a relatively small campus area. In fact, the campus resembled the State in miniature.

103. According to information received by the Special Rapporteur, members of the JMPR structure and the parallel structure were well rewarded for their duties. They received payments in money and in kind; they also had choice rooms and usually were lodged one to a room. In addition, membership in the campus security apparatus was a vehicle to improved social standing. Members of both wings of the campus security apparatus were guaranteed ready access to the provincial heads of the State security apparatus, including the provincial governor. The manifestation of these privileges would have been particularly evident throughout a period during which the average student was lodged like a sardine in a can and was finding it difficult to purchase additional goods and food on account of the delay in receipt of State education grants. It may be presumed that this difference in the standard of living provoked jealousies among the student population.

104. Elections for the JMPR student government were held annually between the months of February and March. Elections did not coincide with the academic year, in order to allow the incoming representatives a chance to acquaint themselves with their responsibilities and electorate prior to the commencement of the forthcoming academic year. According to information received by the Special Rapporteur, while the elections, in theory, were free of government interference, in fact, the authorities took measures to ensure

control over their outcome. On the University of Lubumbashi campus, for example, the JMPR student presidency was expected to alternate between representatives from the "East" and the "West". The East includes the provinces of the East and West Kasai, Shaba, Kivu and Upper Zaire. The West includes the provinces of Equateur Bandundu and Lower Zaire. The "winning" candidate was hand-picked by the authorities well in advance of the balloting.

105. Elections for the 1990-1991 JMPR student government on the UNILU campus took place as scheduled in early 1990. Candidate culling was organized under the direction of the so-called mutuels. Mutuels are groups of students organized along regional lines and incorporated into the JMPR system. Among other things, their purpose was to provide support to newly arriving students on campus - assistance in the location of housing, explanation and simplification of matriculation and course-enrolment procedures. In addition, the mutuels organized negotiations among students from different regions when disputes arose and negotiated between and among themselves to ensure harmonious student relations campus-wide. Their heads, as noted above, participated in some measure in the campus security apparatus.

106. According to information received by the Special Rapporteur, the successful candidate for the JMPR student presidency, whose tenure was to extend into the 1990/91 academic year, ought to have originated from the East. It was reported to the Special Rapporteur that candidate selection for the various posts within the JMPR student government had been arranged to comply with the wishes of the authorities that a student from Shaba be elected.

107. One of the stronger candidates for the presidency had been Mr. Mwela Nkongolo. Mr. Mwela was forced to step aside when the authorities made it clear that they had another more complacent individual from Shaba province in mind for the position. For some reason, the authorities' plan went awry: a student from Bandundu, Mr. Mupupa, was elected. It may be presumed that Mr. Mupupa had not been groomed for the position. It also may be presumed that Mr. Mupupa did not have the complete confidence of key leaders of the mutuels, who played an important role in the political direction of campus life.

108. According to information received by the Special Rapporteur and as will be set forth in greater detail below at section III.A, this constellation of factors played a significant role in the unfolding of the events of 8-12 May 1990 on the University of Lubumbashi campus.

III. EVENTS ON THE CAMPUS OF THE UNIVERSITY OF LUBUMBASHI DURING THE PERIOD 8-12 MAY 1990 BASED UPON INFORMATION RECEIVED BY THE SPECIAL RAPPORTEUR AND AN ANALYSIS OF INVESTIGATIVE FINDINGS RELATING THERETO

109. Section III consists of two parts: an exposition of the events which took place on the University of Lubumbashi campus during the period 8-12 May 1990 and an analysis of the investigative findings relating thereto, bearing in mind the standards which form the legal justification of the mandate of the Special Rapporteur on summary or arbitrary executions.

A. Events on the campus of the University of Lubumbashi during the period 8-12 May 1990 based on information received by the Special Rapporteur

110. The information included in this section should be understood within the larger context of the structure of the State. For this purpose, the Special Rapporteur refers the reader to section II. Where relevant, the Special Rapporteur relates the information he reviews to the standards which form the legal justification of his mandate. For the reader's reference, a plan of the University of Lubumbashi campus and immediate environs is attached as annex III A and a plan of the campus itself is attached as annex III B.

1. Background

111. The University of Lubumbashi (UNILU) is one of the three major universities of Zaire. It is located in the province of Shaba. The University is attended by students from throughout the country as well as from abroad. The other two principal universities are the University of Kisangani, located in the province of Upper Zaire, and the University of Kinshasa, located in the capital city, Kinshasa.

112. During the academic year 1989/90, approximately 12,000 students attended classes at the University of Lubumbashi. It is estimated that between 8,000 and 10,000 students were housed on the campus; the remainder were lodged in the city of Lubumbashi or in nearby towns. The campus is designed to house approximately 2,000 students. Many students boarded unofficially and rooms intended to quarter one or two students often contained from four to six and, on occasion, ten students.

113. Sanitary conditions in many of the dormitories were poor. Indoor toilet facilities often did not function and running water sometimes was not available. Because many of the students could not afford to dine in the cafeteria facilities on campus (also described by the students as substandard), many students were forced to improvise cooking facilities in their cramped rooms. In a word, general student living conditions were far from ideal.

114. Determining the exact number and identity of students on the UNILU campus during the 1989/90 academic year, would have been, according to the information received by the Special Rapporteur, a daunting task. Many of the students attending classes were not officially matriculated at the University; inscription on University rolls takes place following the successful completion of annual examinations, usually held during the month of June. Thus, a determination of the identities of those students allegedly dead or missing following the events in question would have to be extrapolated by reference both to matriculation lists from the academic years 1988/89 and 1989/90 48/ and extensive interviews with students and professors present on the campus during the 1989/90 academic year.

115. During his meeting with the Rector *ad interim* of the University, the Special Rapporteur requested him to make him a copy of the 1988/89 academic list which the two had reviewed during the course of their discussions. The

Special Rapporteur also asked the Rector to forward to him a copy of the 1989/90 academic list as soon as it became available, together with a copy of the relevant student dormitory listings. The Rector was unable to fulfil the former request prior to the Special Rapporteur's departure from Lubumbashi. Following his return, the Special Rapporteur formalized his request for the documents to the appropriate government authorities. At the time of the writing of the report, the aforementioned lists had not been received.

116. According to information received by the Special Rapporteur, students on the UNILU campus were largely apolitical. This was explained to the Special Rapporteur as being a function of geography and poor intrastate communications. The UNILU students accepted the fact that political activity was centred in the capital city, Kinshasa. Students attending the University of Kinshasa were, therefore, more likely to react to national political events than those at other universities and institutions of higher learning. Given the high cost of travel (particularly in relation to student income), students arriving at the University of Lubumbashi seldom departed its immediate environs prior to the completion of their schooling.

117. This attitude changed swiftly in the late Spring of 1990. The expression of political change in the direction of more democratic institutions and a multiparty system, signalled by President Mobutu's speech of 24 April 1990, 49/ did prompt a strong response among students on the UNILU campus. Reaction to President Mobutu's speech was swift and forceful on the campuses of other universities and institutions of higher education as well. A flurry of media activity followed: press which long had espoused the MPR line shifted radically in the direction of critical analysis and reporting; new papers sprang up in all the major cities of Zaire and, most notably, in the capital city, Kinshasa.

118. It appeared for a brief time as though the privileges of power and wealth, enforced by means of a dense security system which suppressed all expressions of dissident thought and action and which had for so long been concentrated in the hands of a few persons, largely of Equatorial origin, were about to fall. The disparities between the privileged and the non-privileged were glaring on the University of Lubumbashi campus where the standard of living for the average student had fallen drastically, particularly since early 1990, and where, since 1988, over 20 students had "disappeared" for reasons unstated, political nonconformity being the suspected ground therefor.

119. It will be recalled that by his speech of 24 April 1990, President Mobutu announced the disestablishment of the single-party State and the founding of the Third Republic. It also will be recalled that, particularly after the President's speech of 3 May 1990, by which he corrected some of the "misunderstandings" resulting from his earlier speech, the effects of the promised democratization were to be incorporated slowly into law and even more slowly in practice. 50/

120. Anger at the President's retraction and the complacent response of the members of the national legislative body, the Parliamentary Assembly, was registered on campuses throughout Zaire. 51/ University of Kinshasa students attacked a bus carrying some of the legislators to a session at which they were expected to acquiesce to President Mobutu's revised plan. The

legislators were heckled and unloaded from the bus. At least one of the women legislators was undressed, a means often used in Zaire to humiliate someone publicly. The security forces intervened and several students were arrested. The University of Kinshasa students called upon their fellow students at the University of Lubumbashi to protest against the President's apparent refusal to permit democracy to develop, as well as the Government's use of excessive force against unarmed students.

121. On the University of Lubumbashi campus, the students lost little time after the 24 April speech in declaring the dismantling of the campus replication of the State-Party structure. In fact, however, the situation was somewhat more complicated. Following President Mobutu's 3 May corrigendum, it was not wholly clear whether JMPR had been disempowered. According to information received by the Special Rapporteur, the Dirigeant and the Student Brigade continued to exercise their functions although, at least as regards the Dirigeant, with a certain ambiguity of purpose and duality of loyalty. 52/

122. Symptomatic of the uneasy position of JMPR structures which seemed at once to exist and not to exist were the circumstances surrounding the delivery of a speech by Mr. Mupupa, the JMPR Dirigeant. Apparently, Mr. Mupupa had been called upon by the authorities, shortly after his election as the student government President, to deliver an encomium to President Mobutu. Apparently under pressure from the electorate, to which he was beholden owing to his surprising election and consequent eminence and privileges, Mr. Mupupa agreed to deliver an alternative speech. This, it may be imagined, did not endear him to the authorities. According to information received by the Special Rapporteur, Mr. Mupupa wavered throughout the period of the events in question between succumbing to student and to government pressure.

123. Within five days of President Mobutu's first speech, the National Solidarity Association (SNS) was established. Among its stated purposes was to improve the quality of student life. According to information received by the Special Rapporteur, a number of students influential in founding the SNS were instrumental in organizing many of the key events during the period 8-12 May 1990, including the cleaning of the campus and subsequent establishment of internal traffic regulations, the planned but aborted student march and the attack on the so-called mouchards (informers) on the night of 9-10 May 1990.

124. Attending the late April meeting were representatives from each of the regional mutuels. 53/ According to information received by the Special Rapporteur, among those attending the meeting were Messrs. Digekisa Piluka (Bandundu), Mwela Nkongolo (East Kasai), Epwa Ekpadzam (Bandundu) and Mupupa (Bandundu), together with Messrs. Kigungu Kifufu (Kasai), Kauka Malungu (Shaba), Kinga Omari (Kivu), Lobanga Bofala Bikale (Upper Zaire), from the East, and Messrs. Zikembo Mbweno (Lower Zaire), Malamba Gangunda (Bandundu) and Ikundumo Nsada (Equateur, Mongo tribe) from the West.

125. Reportedly, Mr. Digekisa Piluka was named President of the SNS, Mr. Mwela Nkongolo its Vice-President, and Mr. Lobanga Bofala Bikale, its Secretary. According to information received by the Special Rapporteur, Messrs. Epwa Ekpadzam, Kigungu Kifufu and Kinga Omari also exercised

leadership functions. Of these six persons, all except Mr. Digekisa lived in dormitories on the University campus. Mr. Digekisa was a brother in the Roman Catholic order of Saint Joseph and lived off-campus in the parish house.

126. Membership in the core SNS numbered around 25. The Special Rapporteur has received information indicating that in fact, however, most of the strategy decisions were taken and executed by a smaller "organizing committee" under the de facto leadership of the SNS Vice-President, Mr. Mwela. Mr. Digekisa served as no more than a figurehead President and a somewhat naive and more-than-willing mouthpiece for transmittal to third parties, including the general public, the media and inquiring authorities, of information relayed to him by organizing committee members who were more prudent about their personal exposure.

127. According to information received by the Special Rapporteur, during the course of several meetings held in late April, SNS debated the effects of the dismantling of the JMPR structure on campus and resolved to undertake many of the responsibilities of the former student government concerning the security and well-being of the campus population. Among other thing, SNS decided to refurbish the dilapidated campus. The organizing committee mobilized students to touch up the dormitory facades, to sweep clean the internal avenues of the campus and, in an effort to preserve the newly introduced order, to establish a "code de conduit" (traffic rules), fixing one-way directions on many of the internal roads. The roads and a number of the sites on the campus were given revolutionary names such as "Boulevard Ché Guevara", "Avenue Mandela" and "Rond-point Perestroika".

128. Organization of the student body was not as daunting a task as might be imagined in that, according to information received by the Special Rapporteur, the campus population numbered under 2,000 in late April 1990. Many of the students had departed the campus for mid-term break. Owing to the fact that the faculty had remained largely unpaid since early 1990 and, consequently, often had boycotted their classes in protest, and to the belief of many students that President Mobutu's 24 April speech would prompt student and faculty agitation, further disrupting student life, many of the between 8,000 to 10,000 students habitually resident on the campus did not bother to return from their holiday.

129. It has been reported by various sources to the Special Rapporteur that SNS met for the first time in late May 1990 and that it had been in existence for over a year. Given the difficulties which would have been encountered by an association not formally incorporated by JMPR and additional information and testimony received by the Special Rapporteur, it seems unlikely that SNS could have existed prior to the 24 April speech of President Mobutu. This having been said, it is to be admitted that at least since 1988 there was good reason for the formally unorganized student body to coalesce in a show of solidarity. During the two years preceding the events of May 1990, as many as 23 students were thought to have disappeared from the UNILU campus. The Special Rapporteur was not furnished with the names of these students, although numerous sources reported a figure of approximately 23 missing students, responsibility for their disappearances being attributed to actions of the campus security apparatus in cooperation with outside forces.

130. In February 1989, the tortured and partially decapitated corpse of one of the missing students, identified by his fellow students as Asha, was discovered in the high brush surrounding the UNILU campus. The infuriated students demanded of the authorities a formal accounting of the other missing students. When one was not forthcoming, the students clashed with units of the Civil Guard called onto the campus to quiet the unrest. One student, Mr. Mampasi Auguy, was killed in the violence and several others were wounded.

131. Despite inquiries, the Special Rapporteur was unable to ascertain whether or not the provincial authorities conducted the requisite investigations into and carried out the subsequent prosecution of any persons responsible for this apparent summary execution.

132. The above-recounted incidents eroded the former relationship of trust between the students and the Governor of Shaba province, Mr. Koyagialo Ngbase te Gerengbo. According to information received by the Special Rapporteur, up until February 1989, the students had been able to rely upon the Governor to respond to their requests to negotiate differences between campus and provincial authorities and the students. Following the events of that year, the UNILU students no longer believed that they could rely fully upon the Governor to fulfil that role.

2. Events of 8-10 May 1990

133. Reportedly, the plea for solidarity issues by the University of Kinshasa students reached the UNILU campus by courier on or about 8 May 1990. SNS called a meeting attended by representatives from each of the regional *mutuels* in order to determine a plan of action. 54/ The meeting ended with the decision to draft a memorandum addressed to the Governor, Mr. Koyagialo, with copies for information to the Rector of the University, Mr. Aloni Komanda and the *Voix de Zaire* (Voice of Zaire), the official Zairian radio broadcasting facility. Also at that meeting, or at a subsequent one, it was decided to organize a march of the UNILU students into the town centre, passing by several key foreign consulates. According to certain versions of the events, the primary aim of that march was the hand delivery of the memorandum to its several addressees, according to others, a demonstration of support for their colleagues at the University of Kinshasa.

134. According to information received by the Special Rapporteur, the drafting of the memorandum was accomplished by an SNS sub-committee established for that purpose and comprised largely of law students, former members of the "*Balance*", the law faculty *mutuel*, most recently headed by Mr. Mwela. Later that evening the memorandum was completed. It demanded the amelioration of various aspects of the poor living and academic conditions on campus and concluded with a call to solidarity of the students of the University of Kinshasa. The memorandum was signed by SNS President, Mr. Digekisa, on behalf of the organization.

135. The situation on the campus became considerably more heated on the following day, 9 May 1990. During that afternoon, the Civil Guard arrested several students at a bus stop. In protest, the students erected a barricade on the road running south of the campus, linking the town to the east with the Kasapa camps to the west, and increased their enforcement of the campus traffic

regulations. In the early evening, a car transporting Ms. Rose Baramoto Koto, the younger sister of General Baramoto, head of the Civil Guard, violated these regulations just inside the principal entrance of the UNILU campus. According to some sources, the vehicle was the property of the provincial commanding officer of the Civil Guard, Major Lokombe. Driver and passenger were cited for the violation and ordered, in consequence, to make reparation for the offence. All the while, the students shouted insults at Ms. Baramoto. Reportedly, the frightened chauffeur fled, whereupon Ms. Baramoto exited from the vehicle and verbally insulted the students. At this point, a number of students attacked Ms. Baramoto physically, undressed her (or nearly so) and, according to some accounts, molested her. Several students reportedly intervened on the woman's behalf.

136. According to the Judgement, Mr. Digekisa was among this group. According to information received by the Special Rapporteur, Ms. Baramoto was escorted to safety by members of the SNS organizing committee who had decided that things had gone a bit too far in the treatment of the younger sister of General Baramoto. The reason for their action probably was not wholly altruistic. The Special Rapporteur believes that Mr. Digekisa was not among the members of the organizing committee who came to Ms. Baramoto's aid.

137. On the basis of the information at the disposal of the Special Rapporteur, this incident was reported to the central authorities, either by Major Lokombe or Mr. Gata, or both. According to the report which eventually reached General Baramoto, Ms. Baramoto had been seriously injured or was dead. It should be noted that, when asked by the Parliamentary Commission whether or not she had required hospital attention following the 9 May incident, the General's younger sister responded in the negative. According to information received by the Special Rapporteur, the probable consequence of these exaggerated reports probably provoked the special security force operation sent in to punish the offending students. 55/

138. Returning to activity on the barricades, a Civil Guard truck ran one of the student road blocks. Civil Guard troops fired into the air and arrested six students. Reportedly, on the orders of the Governor and Colonel Lokiyo, the students subsequently were released. The incident strengthened the students' resolve to stage a protest march into the city of Lubumbashi. Acting either on his own authority or on the prior order of Governor Koyagialo, Colonel Lokiyo reinforced a military cordon surrounding the campus and deployed gendarmerie units to block off the road leading into the city.

139. Also on 9 May 1990, the so-called mouchards (informers) were unmasked. The mouchards were students of Equatorial origin suspected by their colleagues to be members of the campus security apparatus. On the basis of the information at the disposal of the Special Rapporteur, the three mouchards cited in the Judgement, Messrs. Mange Kambo Goda, Zongia Yawili and Yokoto Bosenga, were, in fact, members of that apparatus.

140. Various accounts of the unmasking of the mouchard ring have reached the Special Rapporteur. According to the most widely recounted version, and the one adopted by the Court in its Judgement, Mr. Mange Kambo Goda was surprised by other students in the act of communicating by radio, apparently with one of

his hierarchical superiors. Set upon and beaten by the angry crowd, Mr. Mange reportedly divulged the names of a number of his colleagues, members of the campus security apparatus.

141. According to another version, Mr. Mange aroused the suspicions of a group of students who were discussing the recent arrests of their colleagues. Reportedly, Mr. Mange spontaneously announced to the group that he had learned of the captured students' imminent release. When asked by the excited gathering how he could have such information, Mr. Mange responded unconvincingly, thus revealing himself to the students as a State collaborator. He then suffered the above-recounted fate.

142. Still another version of the events received by the Special Rapporteur suggests that whilst Ms. Baramoto was being molested, Mr. Zongia Yawili ("Willy") came to her rescue, thereby convincing the press of attacking students that he was connected with the State security apparatus. Just as Mr. Mange, Mr. Zongia reportedly was beaten into revealing the names of his co-agents.

143. Numerous accounts also add to each of these three variants the incarceration of the informers in the "*Salle de Méditation*", the detention centre ("*cachot*") operated by the Student Brigade and located within the campus boundaries. There, according to information received by the Special Rapporteur, the informers were tortured. Whether the captured *mouchards* were beaten in open view by their attackers or subjected to the so-called "*passer à tabac*" 56/ in the *Salle de Méditation*, or both, is not wholly clear.

144. In addition, most of the accounts of the *mouchards*' unmasking attest that the beaten *mouchards* confirmed their knowledge of and involvement in the kidnapping and "disappearance", i.e. killing, of at least 23 students in recent years, as well as in the extrajudicial executions of the student Asha and Mr. Namusenge Bagaya, both in 1989. Finally, the beaten students acknowledged the responsibility of elements of the State security apparatus in the killing of the student, Mampasi, on the university campus on 25 February 1989.

145. In the view of the Special Rapporteur, none of the accounts of the initial phase of the *mouchards*' unmasking makes a great deal of sense. It seems improbable that an intelligence agent, professionally trained in self-defence techniques and indoctrinated not to commit any act which ultimately would compromise the preservation of central power, either would be unable to escape the clutches of a collection of mere university students or forthwith would blurt out the names of his colleagues, members of the State security apparatus. Moreover, a professionally trained intelligence agent would not be likely to expose himself by communicating by radio in public. It goes without saying that the average University of Lubumbashi student was not in the habit of parading about with portable communications equipment. Finally, the average University of Lubumbashi student could not gain access to the *Salle de Méditation*. Former members of the Brigade, on the other hand, would have been able to do so.

146. The Special Rapporteur has received information from several sources, including from former members of various expressions of the State security apparatus, which leads him to believe that more than one former member of the

campus security apparatus saw the winds of change blowing in the 24 April 1990 speech of the President of the Republic. According to the information at the disposal of the Special Rapporteur, members of the Student Brigade on the University of Lubumbashi campus derived largely from the province of Equateur. 57/ In accordance with the wishes of the authorities, the Brigade Commander generally was of Equatorial origin and, moreover, almost always sprang from the Ngbandi tribe. 58/ In a word, the ethnic composition of the campus security apparatus mirrored that of the State security apparatus in Shaba.

147. However, not all Brigade members were of the same ethnic origin as the President of the Republic. Certainly, according to the Special Rapporteur's information, during the 1988/89 academic year, a number of the University of Lubumbashi Brigade members derived from other provinces in Zaire. According to information received by the Special Rapporteur, including from former members of various expressions of the State security apparatus, the non-Equatorial Brigade members were treated with a certain mistrust both by their fellow Brigade members from Equator and by the intelligence authorities to whom they reported. It is not surprising, therefore, that at least some of these non-Equatorial Brigade members would have had few qualms about betraying their fellow Brigade members from Equator should necessity so dictate. President Mobutu's 24 April 1990 speech seemed to threaten for a short time to dethrone persons at all levels of the State power structure who were bound to the President. These non-Equatorial Brigade members apparently perceived that their future lay not with the Equatorial power structure but, rather, with the emerging non-Equatorial student movement. On the basis of the information at his disposal, the Special Rapporteur has reason to believe that some of these non-Equatorial students then became the de facto leaders of the student opposition movement or, in other words, members of the organizing committee of SNS.

148. As members of the organizing committee, the "converted" students purposefully betrayed their former colleagues. According to the information he has received, the Special Rapporteur has strong reason to believe that, among other things, these SNS organizing committee members furnished to the SNS membership at large the identities and campus room numbers of various members or, as it were, former members, of the campus security apparatus, all from Equateur province. The Special Rapporteur also has strong reason to believe that, sometime during the period 9-10 May 1990, these same persons were responsible for the prominent posting on the campus board of photographs of other mouchards living on campus. Finally, the Special Rapporteur has reason to believe that any initial capture of the mouchards was carried out by or under the direction of some of these former members of the campus security apparatus, now SNS members.

149. According to the Special Rapporteurs's information, some of these same organizing committee members were involved in the delivery of the "solemn appeal" to an assembled crowd of University of Lubumbashi students on the night of 9-10 May 1990, following the initial capture of the mouchards but prior to the larger-scale operation of the night of 9-10 May 1990. It was this appeal which triggered the hunt for the Equatorial students on the night of 9-10 May 1990, an operation the tactics of which were paralleled almost exactly by the Gata group operation two nights later. Unlike that on the

night of 9-10 May, however, the Gata group operation indiscriminately killed and maimed students who simply happened to be present on the campus. 59/ By contrast, the intention of the operation of the night of 9-10 May was to frighten and physically abuse (termed "correction") those students who had been identified as former members of the campus security apparatus and who, collectively, were viewed as bearing responsibility for the deaths or disappearances of so many students in the recent past.

150. According to the most probable reconstruction of the events of the night of 9-10 May, following the capture and the beating of the so-called mouchards, the SNS organizing committee rallied the support of other students on campus to carry out a raid of the rooms of many of the suspected mouchards. Through the device of the "solemn appeal", some of the organizing committee members raised the emotional temperature of the non-Equatorial student population. Reportedly, by way of retaliation, a few Equatorial members of the Brigade menaced with threats and knives either the audience of the "solemn appeal" or another large gathering of students.

151. According to information received by the Special Rapporteur, students from Equateur province comprised a small minority of the total student population. Given their numerical inferiority - even when taking account of the overall diminution of the student population following the 24 April 1990 speech - the Equatorial students independently were incapable of defending themselves effectively against mass action taken by the non-Equatorial student population.

152. Based upon the information at the disposal of the Special Rapporteur, organizing committee members then rounded up a group of supporters, joined by additional students once the "witch-hunt" got under way. At or about 23.00 hours, the raid was launched. 60/ Its ringleaders directed their band systematically through selected rooms of selected dorms in search of Equatorial informers. The group commenced its operation with the large numbered dormitories in the upper campus and proceeded to the lettered dormitories in the lower campus. In the case of each room targeted, a certain procedure was followed. Several members of the group entered the room and seized the suspected informer, if present. Some led him or her outside to the waiting crowd, while others ransacked the room in search of incriminating "evidence". Thereafter, whenever possible, the room was set afire. The victim was seriously "corrected", that is to say, beaten, by the crowd waiting outside. In addition to the rooms of the student informers, shops and bars belonging to Equatorial students likewise were ransacked and, whenever possible, set ablaze.

153. Based upon information received by the Special Rapporteur, both the JMPR Dirigeant and the Brigade Commander were aware of the operation. Reportedly, the ringleaders of the 9-10 May operation requested the cooperation and assistance of the former JMPR hierarchy. Understandably, the request was denied. According to at least one source, however, both the Brigade Commander (although Equatorial, of the Mongo and not the Ngbandi tribe), and the JMPR Dirigeant agreed to turn a blind eye to the operation. It may be presumed that this was a posture of prudence rather than a stance of conviction.

154. The result of the room searches, according to all versions of the events received by the Special Rapporteur, uncovered incriminating documents and various forms of military and other equipment used for intelligence-gathering. Among the objects reportedly recovered from the mouchards' rooms were night-vision binoculars, letters, photographs and certificates testifying variously to foreign military training and a relationship to the President of the Republic, and indications that the mouchards periodically received hefty payments in money and food from government sources. Reportedly, the incriminating documents and other materials then were turned over to the JMPR Dirigeant, Mr. Mupupa, by several of the organizing committee members. They requested Mr. Mupupa to deliver this "evidence" to the provincial civil authorities and, in particular, to the Governor Koyagialo and to Rector Aloni. Not surprisingly, Mr. Mupupa refused to do so. According to information received by the Special Rapporteur, Mr. Mupupa vanished from the campus and then proceeded to communicate his own account of the events of the night of 9-10 May 1990 to the relevant authorities, including the key members of the State security apparatus. 61/

155. Reportedly, the operation continued until the early hours of the morning of 10 May 1990. Three mouchards, Messrs. Mange Kambo Goda, Zongia Yawili and Yokoto Bosenga, then were convoked before a "people's court". According to the Special Rapporteur's information, the "court" was staffed by two "associate justices" and a "chief justice". The "people", namely, the students of the University of Lubumbashi campus, were represented by a "prosecutor general". Law faculty students assumed these roles. Counsel was not appointed for the accused.

156. The Special Rapporteur has strong reason to believe that the sitting "chief justice" was Mr. Mwela Nkongolo and that one of the "associate justices" was Mr. Epwa Ekpadzam. The Special Rapporteur can neither confirm nor deny, on the basis of the information at his disposal, whether Mr. Digekisa Piluka participated in or was present at the trial. The Special Rapporteur does have reason to believe, however, that Mr. Digekisa was present during at least part of the operation of the night of 9-10 May 1990.

157. The three mouchards were convicted by the "court" on various charges, including responsibility for the deaths or disappearances of the 23 students, and informing for the State against their fellow students. The "prosecutor general" recommended the death sentence, which recommendation the court adopted. The court ordered the immediate execution of the sentence. Accordingly, Messrs. Mange Kambo Goda, Zongia Yawili and Yokoto Bosenga were dragged to a pit, the so-called "carré des amoureux", approximately four metres in depth. They were tossed into the pit, whereupon several of the students began tossing stones onto the victims. The three mouchards were to be burned alive once fuel oil could be located.

158. Reportedly, student informers brought immediate news to the provincial intelligence authorities of the fate which awaited the three Equatorial members of the clandestine campus security apparatus. The news was channeled upward to the provincial Governor, Mr. Koyagialo, who received within an hour the authorization from the central authorities to undertake a rescue operation of Messrs. Mange Kambo Goda, Zongia Yawili and Yokoto Bosenga.

159. Colonel Lokiyo ordered detachments of the gendarmerie and the Civil Guard to rendezvous near the site of the operation. Under the command of Captain Bongonda, commanding office of the Mobile Brigade of the city of Lubumbashi, the operation was carried out with remarkable dispatch. The three _mouchards_ were borne away for medical treatment without injury to any other persons present at the scene. Reportedly, at least two of the three _mouchards_ were transferred to a medical facility in South Africa for intensive care treatment. This was not done, however, until sometime after 12 May 1990, when four students, including at least one student seriously wounded as a consequence of the events of the night of 11-12 May 1990, were transported together from Lubumbashi.

160. According to information received by the Special Rapporteur, the condition of the three _mouchards_ was not medically critical. In fact, the Equatorial students who accompanied the victim of the events of 11-12 May 1990 were in satisfactory enough condition to discuss their version of the events which transpired on the University of Lubumbashi campus throughout the period in question from their hospital beds in South Africa with representatives of national and international media.

161. Following the rescue operation, relative calm returned to the university campus. Understandably shaken by the events of the previous evening, a great majority of the remaining Equatorial students began to quit the campus. According to information received by the Special Rapporteur, many of the Equatorial students were sought by "_amis et parents_" _62_/ (friends and relations) from the town or by Equatorial elements of the Civil Guard and the FAZ and escorted off the campus grounds. According to the Special Rapporteur's information, their recounting of the events, coupled with the more precise information passed along to the State security apparatus by several of the ringleaders of the raid of 9-10 May, fuelled a drive for revenge among the Lubumbashi Equatorial community.

162. On the basis of the information he has received, the Special Rapporteur has strong reason to believe that among the first to communicate inflammatory news to the central authorities concerning the unmasking of the clandestine Equatorial security apparatus and the general threat posed to the Equatorial student body was Mr. Gata, Provincial Director of the National Immigration Agency. The Special Rapporteur also has strong reason to believe that Mr. Gata's information was independently corroborated by similar information arriving from, among others, Colonel Lokiyo, Regional Commander, Major Lokombe, commanding officer of the _Garde civile_ and Mr. Uba, Provincial Director of AND. According to information received by the Special Rapporteur, it was on the basis of this information, together with the previous day's news that the younger sister of General Baramoto was either seriously wounded or dead, that the heads of various expressions of the State security apparatus, together with various civil authorities, initiated a strategy designed to redress the harms and dishonour done to the Equatorial informers and to the Equatorial student community on the campus of the University of Lubumbashi.

163. The Special Rapporteur would remark that, among other things, threats had been made against the life and physical integrity of numerous students on the University of Lubumbashi campus during the course of the events

of 9-10 May 1990. Such being the case and taking into account the standards which form the legal justification of his mandate, the Special Rapporteur would pose the question: Why did the appropriate provincial authorities, in accordance with prevailing law and in conformity with relevant public international law standards, not commence investigations into those events with the aim of bringing to justice the responsible persons?

164. Taking into account the description and functioning of the State security apparatus in general and its forces in Shaba province in particular, together with the information at his disposal concerning the events in question, the Special Rapporteur has strong reason to believe that the provincial intelligence authorities and, shortly thereafter, the central intelligence authorities, were more than adequately apprised both of the details of the 9-10 May operation and of the identities of those persons responsible for its organization and execution.

165. On the basis of the information at his disposal, the Special Rapporteur has strong reason to believe that the ringleaders of the operation of 9-10 May 1990, the few key members of the SNS organizing committee, recognized that events had gone a bit further than they had intended. Or, in other words, "when you shake a coconut tree, you have to expect that a nut will fall on your head". 63/ By this point or shortly after the so-called trial of the mouchards, at least some of the ringleaders quite possibly turned their coats once again and reported to the provincial intelligence authorities the details of the operation of 9-10 May 1990, including the names and dormitory block and room numbers of several of the key participants in the "witch-hunt". 64/

166. It would seem to the Special Rapporteur that were it the aim of the authorities to deal, in accordance with prevailing national law and international standards, with the situation which had developed on the University of Lubumbashi campus, the authorities possessed of information concerning that issue should have turned it over to the judicial authorities with a request that an investigation be initiated, and the persons thought to be responsible be detained for questioning and, if so warranted, arrested.

3. Events of 11-12 May 1990

167. Following the events of the 9-10 May, the security cordon around the university campus was tightened so as to prevent all entry onto or exit from the campus. This action only strengthened the resolve of the student leadership to carry out their planned march into town, which two days earlier had been scuttled on orders of the authorities. According to information received by the Special Rapporteur, during the early morning of 11 May, students were forcibly rounded up by SNS organizing committee members to join in the march. Also sometime during the early morning of 11 May, Rector Aloni, received a radio communication from the JMPR Dirigeant, Mr. Mupupa, informing the Rector of the planned march, noting that its intended purpose was to confront the Governor in his residence in order to force him to address their longstanding grievances, as well as to explain the motivations which underlay the reprisals they had taken against a collection of Equatorial students who, for so many years, had been serving as clandestine government security agents.

168. Rector Aloni, immediately relayed his intelligence to Governor Koyagialo, who informed him that he had been listening on the communications network and had picked up Mr. Mupupa's call directly. The Governor indicated to Rector Aloni that he intended to meet the students that morning and requested the Rector to go onto the campus to lay the groundwork for his arrival. The Rector, accompanied by the Academic Secretary-General, departed for the campus. The negotiations broke down before they even began, reportedly because the students had little faith in the intentions either of the Governor, or of his agent, Rector Aloni. Moreover, the students had become mistrustful of their Dirigeant, Mr. Mupupa, who, for some unexplained reason, had been absent during the preparations for the march and had not assumed his role as mediator on behalf of the students.

169. According to information received by the Special Rapporteur, the students were represented in their interchange with the academic authorities by the members of the SNS organizing committee. Following a half-hour or so of fruitless discussions with the Rector and under the direction of the organizing committee members, the students seized Rector Aloni, forced him to remove his MPR insignia and thrust into his hands a placard reading "Down with Mobutu". They then placed the Rector ceremoniously at the head of the march column. The march hardly had gotten under way when it was repulsed by the cordon of gendarmes drawn up in front of Camp Mutombo. The Rector seized the opportunity to flee into the gendarmerie lines. He then departed for the Governor's residence to report upon the disquieting events of the early morning. Behind him there ensued a couple of hours of shadow-boxing between the students and the gendarmes, marked by stone-throwing from the one side and some firing into the air from the other side. No casualties or arrests resulted from the exchange and sometime in the early afternoon, the confrontation subsided.

170. Meanwhile, preparations were being made by key Equatorial provincial civil and military authorities to respond to the subversive actions of the non-Equatorial students over the previous few days. Sometime before the early morning of 11 May, ANI Provinical Director Mr. Gata Lebo Kete drafted security report No. 05/ANI/D7/000071/1990, addressed to Governor Koyagialo. This report, which Mr. Gata had delivered to the Governor and simultaneously had relayed to the central authorities by his subordinate, Mr. Idali-Musese, provided the written subject-matter for the so-called security meeting called by Governor Koyagialo for 11.00 hours at his residence. The security report took note of the "worrisome" situation prevailing on the University of Lubumbashi campus, highlighting the danger to students from Equateur province and, in particular, those from the Ngbandi tribe. Consequently, the report recommended that "[t]he authority should intervene rapidly on the basis of certain information furnished by the special services", and that "once an atmosphere of calm has returned", the room of Mr. Mwela, characterized as the ringleader of the operation of 9-10 May 1990, should be searched and he should be arrested. 65/

171. According to the information at the disposal of the Special Rapporteur, Mr. Gata convened a pre-sessional security meeting at the Governor's residence of the key provincial civil and military authorities, but excluding Governor Koyagialo. All from Equateur province, the other participants were the AND Provincial Director, Mr. Uba Baligbia, the Regional Commander,

Colonel Lokiyo Lianza and the provincial commanding officer of the Civil Guard, Major Lokombe Bano Kande. The purpose of the meeting was to finalize the organizational and strategic aspects of an attack group put together under the direction of Mr. Gata in order to avenge the wrongs done to the Equatorial community in general and to the President of the Republic in particular. Mr. Gata's attack plan was to be presented to Governor Koyagialo as a fait accompli during the main security meeting called for 11.00 hours.

172. Mr. Gata's carefully crafted security report furnished the written record on the basis of which the Governor would be forced to "authorize" the Gata attack. In other words, as a matter of hierarchical propriety, the Provincial Governor was bound under law to take decisions upon matters which affected the maintenance of order and security within his jurisdiction: vis-à-vis the central authorities, Governor Koyagialo would be justified in acting to restore order and security on the university campus on the basis of Mr. Gata's security report.

173. According to the information at his disposal, the Special Rapporteur has strong reason to believe that, starting with the attack upon the younger sister of the Supreme Commander of the Civil Guard, Ms. Baramoto, through to the witch-hunt of the night of 9-10 May 1990 and its aftermath, key Equatorial civil and military authorities were communicating directly with their hierarchical superiors in Kinshasa, independently of Governor Koyagialo. These were: Mr. Gata, Mr. Uba, Colonel Lokiyo and Major Lokombe. The Special Rapporteur also has strong reason to believe that these authorities' reports related exaggerated accounts about the situation on the ground in Lubumbashi. 66/

174. Specifically, the Special Rapporteur has learned that Ms. Baramoto was reported to the central authorities as being dead or close to dead. In addition, the uncovering of the mouchard ring, a clandestine Equatorial security force operating on the campus, was a direct challenge to the State security apparatus which underpinned the existence of the President of the Republic. In a word, the events on a mere university campus was translated by both the provincial and the central authorities into incidents of national significance: the security of the State, that is to say, the President of the Republic, was viewed as being at risk.

175. According to the information he has received, the Special Rapporteur has strong reason to believe that the central authorities initially authorized the formation of a provincial force to respond to the danger posed. That force was to be under the de facto organizational control of the ANI Provincial Director, Mr. Gata, who had succeeded in mobilizing the various elements of the Equatorial community - civilian and military authorities and their Equatorial subordinates, together with outraged "friends and relations" of the injured Equatorial students and UNILU students, largely from Equateur province - to meet the perceived threat to their existence with decisive action. According to the information at his disposal, the pre-sessional meeting concluded with a decision to present the finalized plan of attack, already authorized in all but operational detail by the central authorities, to the Governor for his "approval".

176. Governor Koyagialo, who by then had in his hands Mr. Gata's security report, convened the main security meeting at his residence at or about 11.00 hours. Participating in the meeting were, in addition to the Governor, AND Provincial Director, Mr. Uba Baligbia, Regional Commander, Colonel Lokiyo Lianza and provincial commanding officer of the Civil Guard, Major Lokombe Bano Kande. All of the meeting participants derive from Equateur province. Mr. Gata absented himself from the main security meeting on the grounds of illness. More probably, he hastened away to put into place the elements needed to carry out the evening's attack.

177. Notoriously absent from the meeting were several provincial authorities whose presence could have been expected were the actual topic of the meeting to be the lawful resolution of the unstable situation prevailing on the UNILU campus: the Vice-Governor (Vice-Gouverneur) of Shaba province, Mr. Malengela Njenji, the Director of the Region, Mr. Biaza, the Rector of the University, Mr. Aloni, the Academic Secretary-General, Mr. Pungisabo, the Urban Commissioner of Lubumbashi (Commissaire Urbain de Lubumbashi) and the Shaba Prosecutor General, Mr. Ntesa Ne Mpemoziki.

178. The officials present, who would just have come from their conference with Mr. Gata, presumably rehearsed to Governor Koyagialo the wording and intent of Mr. Gata's report in order to argue that he, the Governor, had lost control of the neighbouring campus and then had failed in his responsibility to the Equatorial community in general and to the President of the Republic in particular. Their solution was ready-made. They presented their operational plan, already accepted in outline by the central authorities, to the Governor for his "approval".

179. Apparently, during the course of the meeting Governor Koyagialo tried to discourage the execution of the plan, but eventually acquiesced to the order of his superiors as communicated to him through his de jure subordinates. Accordingly, the Governor ordered the cutting of the water and electricity supply to the university campus. The resulting darkness would allow the members of Mr. Gata's group, many known on campus, to operate unrecognized, while a lack of water would favour any incendiary activity planned by the group. 67/ The Governor further announed his intention to continue to seek a dialogue with the students. Understandably, although in contravention of legal prescriptions governing the disposition of security meetings, the 11 May 1990 security meeting was held without written agenda and the decisions taken at that meeting were not recorded in a procès-verbal.

180. Once the meeting disbanded, Governor Koyagialo ordered Mr. Elonga Nkanda, provincial head of the National Electric Company, to take the necessary steps to cut the campus electricity supply. Mr. Elonga, in turn, charged his subordinate, Mr. Vita Landu, with the execution of the order. Mr. Vita raised the technical objection that cutting the current on the entire campus necessarily would involve severing the power supply to the surrounding military camps. This news was communicated to Governor Koyagialo who responded that the plan would have to be abandoned. Upon further study of the problem, however, Mr. Vita determined that the power could be cut solely on the upper campus (comprising the large numbered dormitories to the north-east)

without affecting the military installations. When this proposal was passed along to the Governor, he gave the order to implement it between 19.00 and 19.30 hours.

181. In the interim, Governor Koyagialo contacted the Présidence to communicate the results of the morning security meeting and, apparently, to try to overturn the decision of the central authorities ordering the Gata operation. It is not wholly clear whether Governor Koyagialo succeeded in his efforts. According to the Special Rapporteur's information, the Présidence, once apprised of the seeming gravity of the situation on the UNILU campus and alerted to the decisions taken by certain security commanders at the national level, who themselves had been reacting to a series of disquieting reports reaching them from Lubumbashi, directed a SARM unit to carry out a commando operation on the UNILU campus.

182. Some time later that afternoon, Governor Koyagialo received the definitive order from Kinshasa to arrange local logistical support for the members of the SARM operation which were to arrive in two groups at Luano Airport (the international airport at Lubumbashi): the commanders abroad the DC-10 Air Zaire flight that was to arrive behind schedule at about 19.00 hours, and the troops abroad a military transport plane due to land somewhere between 22.00 and 22.30 hours. According to the information he has received, the Special Rapporteur has strong reason to believe that Governor Koyagialo executed this order.

183. During the course of that same afternoon, Governor Koyagialo once again charged Rector Aloni to make a final attempt to negotiate with the students on his behalf. Rector Aloni, in turn, charged Mr. Samafundu, Director of Student Affairs, with the task. Reportedly, Mr. Samafundu arrived on campus about 15.00 hours. Following a rather heated exchange between him and the students, the parties agreed upon a meeting between student representatives and the Governor on the campus the following morning. For a short time, calm returned to the campus and some of the troops ordered to advance to the campus perimeter withdrew to Camp Mutombo.

184. In the meantime, preparations for the Gata attack group were under way. All reports suggest that Mr. Gata directed that tactical operations should be centralized in the Guest House, a faculty housing unit situated off the campus and near one of the military camps, Camp Mutombo. Reportedly, an overwhelming number of the professors lodged at the Guest House were of Equatorial origin. Moreover, on the basis of the information he has received, the Special Rapporteur also has reason to believe that two of these professors, Messrs. Olofio Ben Olomi and Mongonda Moboli, served as intelligence agents in the state security apparatus. Messrs. Olofio and Mongonda derive from Equateur province.

185. Throughout the day of 11 May, elements of the Gata group and liaison officers arrived, convened and departed to ensure that all arrangements for the forthcoming attack were in place. Various sources have reported to the Special Rapporteur that among the paraphernalia assembled were devices to conceal the identity of the attackers to local students, including masks. Among those participating in the various conclaves were UNILU students,

predominantly of Equatorial origin, Equatorial townspeople of Lubumbashi (the so-called "friends and relations" of the three molested mouchards), and elements of the Civil Guard and FAZ who derive from Equateur province.

186. By the late afternoon, the final dispositions of the repeatedly reinforced security cordon had been made. On the western perimeter and curling around to the south-west were units of the Civil Guard. On the eastern perimeter (blocking the routes to town) were units of the Gendarmerie. The northern half of this eastern line was held by Captain Mwanda Konde's troops, headquartered around the Guest House and extending south to the old Tshombe airfield. The southern half of the line was in the hands of Captain Bongonda's men, deployed in front of Camp Mutombo. On the basis of the information at his disposal, the Special Rapporteur deduces that the northern sector, between the campus and the nearby Luano airport, was manned by a combination of Civil Guard troops and troops of the 21st Brigade (probably the 211th Battalion).

187. Towards late afternoon, rumours began circulating on the campus of an imminent attack by special security forces. According to the information received by the Special Rapporteur, the news of an attack group was first communicated by Equatorial students still residing on the campus to their non-Equatorial friends. According to other reports. non-Equatorial members of the Civil Guard posted on sentry duty around the campus, who had heard something about a night attack from their colleagues, warned numerous non-Equatorial students to flee the campus as soon as possible.

188. According to some of these reports, Equatorial students confided in their friends the password which was to be used to identify Equatorial students left on the campus and shield them from attack. The password was the phrase "Lititi Mboka", (sometimes rendered "Matiti Mboka"). In the Lingala language 68/ these two words may be translated respectively as "grass" and "dwelling place". According to reports received by the Special Rapporteur the attackers would challenge a prospective victim with the word "Lititi". If the response "Mboka" was not forthcoming, that person would be marked for death.

189. Before nightfall, panic reigned on the campus. Students who tried to flee were intercepted at the campus perimeter by elements of the military security cordon and forced to return. Reportedly, various civil and military authroities, including Rector Aloni and Captain Bongonda, commanding officer of the Gendarmerie, also had learned of the rumours regarding an imminent attack. Moreover, at approximately 19.00 hours, the JMPR Dirigeant, Mr. Mupupa, reportedly radioed Rector Aloni to inform him of the same thing. Rector Aloni instructed the student leader to return to campus, adding that he already had passed on his earlier-received information to Governor Koyagiaolo. Governor Koyagialo, in turn, informed the Rector that he had received news of these rumours as early as 16.30 hours from the Director of the Region, Mr. Biaza, and that he "had discouraged the operation by countermanding it", an apparent reference to his attempts to rescind his "authorization" of the Gata attack in the morning security meeting by his subsequent communications with the Présidence.

190. Governor Koyagialo further ordered Major Lokombe to ensure that the previously ordered electricity cut had been carried out. The Major, in turn,

assigned this task to his operations officer Lieutenant Makunga Nsumbu, who took a small detachment of the Civil Guard over to the electric substation located near the Guest House. Sometime between 19.00 and 19.30 hours, the electricity indeed was cut, plunging the upper half of the campus into obscurity.

191. About the same time, students noted the considerably delayed arrival of the regularly scheduled Air Zaire DC-10. Many deduced that the flight deliberately had been held in Kinshasa to allow for the trnasport of special security forces sent to "correct" the students for their impudent behaviour vis à vis the regime, and began to comnmunicate their conclusions to their friends and neighbours. The level of panic on the campus intensified.

192. Sometime between 20.00 and 22.00 hours, a large number of students built a bonfire in front of block 10, around which they kept watch. Many brought along mattresses so that a relay-guard system could be maintained between those watching for the arrival of troops and those sleeping. About this time as well, some of the students observed the overflight of another aircraft, which was described by some as resembling a C-130 military plane. Some of th students on the lower campus where the electricity had not been cut, noticed number of Civil Guard troops stationed between the side of the Medical Facult lecture hall and demortitory block K. Reportedly, when asked by the students to justify their presence, the soldiers replied that they were there to assur the security of the students.

193. Suddenly, between 23.00 and 23.30 hours, a mob of men, some wearing mask or cowls ("cagoules") and some with blackened faces, and all brandishing machetes, knives, bayonets and iron bars, materialized by the Social Sciences buildings and passing by block K, came howling down Boulevard Ché Guevara, scattering the terrified students gathered around the bonfire in all directions. Many of the students fled into the nearest available dormitory block for shelter, others tried to make it back to their dormitory rooms.

194. All reports received by the Special Rapporteur are in agreement that a number of the members of the attack group were of an implausibly heavy build to be students. According to some of these reports, students who survived th attack were also able to identify fellow students among the attackers. On th basis of the information he has received, the Special Rapporteur estimates that this first attack group comprised somewhere between 100 and 150 persons. Reportedly, as well, the actual composition of the group altered during the course of the operation, as some of the potential student victims slipped int the group in order to escape being targeted themselves.

195. The group's overall strategy emerges fairly clearly from the accounts received by the Special Rapporteur, but its modus operandi was more than somewhat muddled. The strategy was, in a word, to cause as much physical and material damage as possible to the persons and property of students who were perceived as having attempted to subvert the order of the State through their having uncovered an informer network, part of the State security apparatus, and subsequently having tried to kill three of these Equatorial informers. The Modus operandi, on ther other hand, appears to have been a mere mimicry o the attack carried out two days before upon suspected Equatorial informers.

196. According to information received by the Special Rapporteur, the overall commander of the group was someone referred to as the "doyen", a term of respect usually accorded to someone in deference to that person's age or worldly experience. Two subunits of the group apparently were guided by former UNILU students, one of these commonly being referred to as the "bande a Geros". 69/ The actual killing and attempted killing, on the other hand, was for the most part the responsibility of the military elements within the group.

197. On the basis of the information he has received, the Special Rapporteur is able to conclude that the doyen and each of the subunit heads carried lists containing the names and dormitory block and room numbers of persons singled out for their involvement in the attack of 9-10 May. As he stated above, according to the information he has received, the Special Rapporteur has strong reason to believe that some of the ringleaders of the attack of 9-10 May already had departed the campus, having handed over to the provincial intelligence authorities the details of that earlier operation. This information, together with additional intelligence coming from Equatorial informers on the campus, including the three captured mouchards, provided the basis for the lists carried by the two attack groups.

198. While some of the students who participated in the attack of 9-10 May did undoubtedly remain on campus, it would have been more than a little difficult to locate them unless they either had remained asleep in their rooms throughout the uproar or had chosen to flee from the bonfire directly into their rooms. As a consequence, the Special Rapporteur believes that most of the students injured or killed as a result of the first operation were "innocent victims" in the sense that the attackers revenged themselves upon those who happened to be in or around rooms scheduled for targeting, or who happened to flee in the direction of one of the group's components circulating around the campus.

199. The doyen reportedly ordered each of the subunits to cover certain blocks in the upper and lower campuses and, having concluded their operation, to rendezvous between blocks J and A in order to ensure that all were accounted for and to allow the student members of the attack group to gather whatever of their belongings remained in their dormitory rooms prior to departure from the campus in military vehicles requisitioned for the operation.

200. According to the Special Rapporteur's information, the actual execution of the Gata group attack was clumsy and haphazard. Loud and ill-disciplined gangs turned up in front of a dormitory block: the military elements entered the building and, having forced open the door of the intended victim, chanted "Lititi". If "Mboka" was not the response, one of the persons in the room (or where the room was unoccupied, an adjoining room), was seized at randon and dragged to the waiting gang members below who then beat the victim, in some instances killing him or her. Again in some instances, rooms in the dormitory block from which the victim was plucked were ransacked or set afire.

201. According to some reports received by the Special Rapporteur, some of the gang members tried to burn alive the victims handed over to the crowd by setting alight mattresses on which the victims were tossed, in imitation of the intended "execution" method of the three mouchards. According to yet other reports, one woman was pulled from her dormitory room and sexually

molested, in imitative reprisal for the 9 May attack upon Ms. Baramoto. Finally, and again in imitative reply to the attack of 9-10 May shops and bars belonging to non-Equatorial students or to third parties, also non-Equatorial, were pillaged and, in some cases, set ablaze.

202. The Gata group's attack produced general mayhem, in the wake of which was scattered a very evident trail of debris - pillaged and burned buildings, wounded and bleeding students and dead bodies. On the basis of the information at the disposal of the Special Rapporteur, including that from former members of various expressions of the State security apparatus, such was not the way in which a Zairian commando unit conducted its business. A true commando operation is surgical in both purpose and execution. Typically, the commando kill a small number of selected victims with the primary aim of terrorizing those left behind. The operation is carried out with dispatch, generally within a period of 30 to 45 minutes, and leaves behind no evidence and certainly no dead or wounded bodies, which could attest to its presence. Part of the intended effect is produced by the sheer spookiness of the victims' disappearing utterly and forever.

203. The first victims to escape from the Gata group attack were three wounded students who, between midnight and 1.00 hours on 12 May straggled into the lines of Captain Bongonda's Gendarmerie unit, together with one or two more who reached Captain Mwanda's lines, all telling of a massacre on the campus. Captain Bongonda placed his victims in a jeep for transport to the hospital. On the return trip, the jeep crew also requisitioned and brought along the ambulance of the University Clinics (a Lumumbashi medical facility). The ambulance was held under orders at Captain Bongonda's command post until near dawn when it, together with some small military vehicles, was permitted to enter the campus to recover the bodies of the wounded and dead.

204. The group of wounded students who had fled to Captain Mwanda's forces made their way to the Social Director of the University, Mr. Mullumba, at the Guest House. Mr. Mulumba then contacted Governor Koyagialo to alert him as to the current State of affairs on the UNILU campus. The Governor, for his part, reportedly radioed to Colonial Lokiyo an order to investigate the situation. The Colonel departed for Captain Bongonda's command post: Captain Bongonda either already had sent or then sent forward a reconnaissance patrol under the command of Sergeant Kongolo Monga, who returned to report that all was quiet, save that three fires were burning on campus. Colonel Lokiyo reported this news back to Governor Koyagialo, whereupon no further investigation of the campus situation was ordered.

205. Meanwhile, on the campus, between 1.00 and 2.00 hours, the Gata group operation began to wind down. The various units met up as planned at the head of the lower campus, the student elements of the group collected their belongings and the entire group exited from the foot of the lower campus on the road skirting block K and the Social Sciences buildings. About the time the Gata group began preparations for departure and the SARM unit first positioned itself to enter the campus at 2.00 hours, Colonel Mangbau, commanding the training centre at Camp Kasapa, apparently alerted by the noisy exit of the Gata group team, mobilized a company of recruits under

Lieutenant Polo, ready to support any intervention needed on the campus. When he reported his initiative by radio, he was told to have his troops stand in reserve. Around 5.00 hours, he received the order to dismiss them again.

206. During the Gata group's clumsy rampage, the second, professional attack group had arrived in Lumumbashi and was moving into position. According to information received by the Special Rapporteur, the SARM rank-and-file were informed of their mission only within 24 hours of their dispatch. The site of that mission was not communicated to them until immediately prior to their departure, on the evening of 11 May, abroad a military transport plane bound from their camp to Lubumbashi. The operational details of that mission were related to them during the course of briefings following their arrival between 22.00 and 22.30 hours. Repordedly, this operation was given the code name "Operation Scorpion".

207. The Gata operation was already under way when the SARM commando troops, having completed their on-site briefing, including the news that the purpose of their operation largely had been pre-empted by the Gata force, arrived at the campus perimeter to carry out their orders. Attempting to make the best of a bad situation, the SARM groups held their position until the Gata group had completed its final rounds and relative quiet had returned to the campus. On the positive side, the Gata mob's attack had at least broken up the group around the bonfire, which had been planning to keep watch all night and which would have presented a real embarrassment to a commando planning to operate clandestinely.

208. The SARM unit then entered the campus between 3.00 and 3.30 hours, and executed its orders according to plan - albeit with necessary revisions to account for the fact that most of their intended victims, namely the ringleaders of the attack of 9-10 May 1990, either had fled the campus prior to the first attack or had been captured by or fled from the first round of assailants.

209. On the basis of the information at his disposal, the Special Rapporteur concludes that the SARM troops were guided in their search for victims on the basis of pre-established lists containing the names and dormitory block and room numbers of the victims. A contingent of between 25 and 40 highly trained commandos separated into several teams, some assigned to handle the dormitory blocks on the upper campus and others on the lower campus. Each team included among its members a so-called "*équipe de nettoyage*" (clean-up crew), whose job it was to remove the bodies of those dead or wounded as a result of their colleagues' blows.

210. Upon reaching the dormitory block marked on the list, a small number of team members proceeded into the building, whereupon one remained at the bottom of the central stairwell to forestall any attempt by students roused by their presence to flee. The other commandos proceeded to the targeted room, broke down the door, if locked, entered the room and, seizing the victim, killed or mortally wounded him or her. The commandos then carried the body out, handed it over to one of the clean-up crew members, who spirited it away to a centrally stationed vehicle which departed with the commando when the entire operation was completed. A second clean-up crew member performed the same

functions when the next body was brought down, relief being provided by a relay system which ensured that at least one clean-up crew member was ready for duty at all times within each commando team.

211. According to information received by the Special Rapporteur somewhere between 3.45 and 4.15 hours, the SARM commando regrouped on the campus and headed as a single unit to a position just below the Polytechnic Faculty. T vehicle destined to hold the dead and wounded had advanced to that position prior to the commando's arrival; other vehicles were waiting to evacuate the commando. The column of vehicles proceeded along the track road by the Kimbembe pumping station to the airport, where the military air-transport craft upon which the troops had arrived took off, commando and dead and wounded aboard.

212. About one hour later, the ambulances and a few small military vehicles held in waiting just outside the main entry to the campus were authorized t penetrate the military cordon. Personnel assigned to these vehicles then rounded up those bodies visible on the campus. The wounded were transporte to the various medical facilities in Lubumbashi, including the GECAMINES So Hospital and the University Clinics. The dead were segregated from the wounded and disposed of locally. One of the wounded, Mr. Ilombe wa Ilombe, expired in the GECAMINES South Hospital on 17 May 1990 as a result of a cranial fracture. To date, his is the only death officially recognized by t Zairian authorities.

213. Soon after dawn, on the university campus students began reappearing f the dormitory blocks and other hiding places and, toting their mattresses a whatever else of their personal belongings they could carry, massed at its main entrance. Initially they were repulsed by the security cordon. Withi an hour or so, however, Governor Koyagialo gave his authorization for them t quite the campus and ordered the closing of the campus *sine die*.

4. Aftermath

214. On the morning of 12 May, Governor Koyagialo arranged for the free transport out of the city, on trains and planes chartered for the purpose, c all persons able to produce a university identity card or some other proof c university status. According to information received by the Special Rapporteur, the majority of students had departed Lubumbashi within a few days of the events; within two weeks, almost all of the former University of Lubumbashi student population had vanished.

215. That same morning, following the triage of the dead from the wounded aboard the amublances and military vehicles, the corpses were borne away to temporary internment site within the grounds of Luano airport. According t information received by the Special Rapporteur, this site was kept under round-the-clock guard by special forces, until the bodies were disinterred reburied in one or several grave sites on the rural outskirts of Lubumbashi

216. On the basis of the information he has received, the Special Rapporteu has strong reason to believe that the bodies deposited in these reburial si also were subsequently disinterred and scattered such that, at the present

day, no mass grave site remains. If nothing else, the publicity which surrounded the location of mass graves, both in Zaire and abroad, 70/ may well have prompted the destruction or displacement of such incriminating evidence.

217. The Special Rapporteur estimates that 10 to 12 students lost their lives in the Gata attack. 71/ In as much as some of the students cited on the lists carried by the Gata group for targeting had left the campus during the early morning of 11 May and others would have been dispersed in the initial bonfire rout, and given that the group's strike techniques, although brutish, certainly were not well calculated to kill with maximum effectiveness, the mob probably wounded substantially more students than it killed. Indeed, it is the Special Rapporteur's belief that, of the students hospitalized in medical facilities in Lubumbashi following the events of 11-12 May, most of them were wounded by blows of the Gata gang.

218. Consequently, the Special Rapporteur is led to conclude that the great majority of the casualties collected by the ambulances and vehicles permitted officially to circulate in the early hours of the morning of 12 May can be attributed to the Gata group attack. The SARM clean-up crew would have had neither the time nor the inclination or, for that matter, the mandate to dispose of the debris left scattered in the wake of the first attack. Most certainly, the Gata group was responsible for the material destruction visible on the campus immediately after the night's events.

219. The Special Rapporteur does believe that many more students are "missing". 72/ The Special Rapporteur has reason to believe that some of the students cited by various sources as "missing" went into hiding within Zaire or into exile in other States; others simply had no inclination to return again to the university. Given the climate of fear which prevails owing to a belief, well founded or otherwise, in the omnipresent power of the State security apparatus, coupled with the ambiguous role which some of the missing students apparently played in the events of 8-12 May 1990, it seems unlikely that most of these missing persons will declare themselves in the near future.

220. The toll from the second operation also was probably quite low: the commando's task is to kill few, to terrorize many and to leave as little evidence of its operation behind as possible. Moreover, the identity of the victims of that attack will likely never be known as most, if not all of them, were spirited away with the departing commando. Again, some of the intended victims of the SARM commando would have been those same students who had escaped the blows of the Gata group. Others who figured on the death lists probably went into hiding on the darkened campus once the raucous, first attack group made its presence known and would have been prudent enough not to venture back to their rooms until daylight.

221. Within a few days of the official closing of the campus, much of the university property was sacked and gutted. According to information received by the Special Rapporteur, most of the pillaging was carried out fairly soon after the events of 11-12 May by soldiers and townspeople. According to some reports, the Gendarmes and Civil Guards posted on the campus started the destruction under orders to confuse the traces left by the attacks. Many of the doors and windows of the dormitory, teaching and research facilities were

smashed, broken or unhinged. Toilets, wash basins and showers were ripped out. Some of the destruction still was evident almost a year later when the Special Rapporteur visited Lubumbashi.

222. Within a few days following the events on the campus, alarming stories began to circulate in the neighbourhood and in the press, telling of a massacre leaving hundreds dead, who were then carted off to be deposited in mass graves or dropped from planes over tropical forest areas to be consumed by native fauna. A correspondent from Lubumbashi provided a detailed account of the stories reaching him concerning the massacre and local and national reaction to them. In contrast, on 13 May, one day following the closure of the campus, the local radio broadcast an account which was to remain the official version of the events of 8-12 May for the next two weeks: there had been an inter-ethnic student riot on the campus leaving a number wounded. On that same day, the Shaba Regional Assembly convened with the Vice-Prime Minister and Commissioner of State for the Administration of the Territory and Decentralization, who had been sent from Kinshasa "to look into the situation at the moment" in Lubumbashi, and received from him the authorization to constitute a Commission of Inquiry. Two days later, the Commission began its work, which continued well on into the next month. Just as its report was about to be presented, it was seized, reportedly on orders of the central authorities, and quashed.

223. On 15 May, the number of wounded was officially put at 14, four of whom required intensive care treatment. On 16 May, Rector Aloni appeared on local television to repeat the official figure of 14 wounded students. That same day and for the remainder of the week, the municipal schools were practically closed by student protests, which cited DSP involvement in a massacre on the university campus on the night of 11-12 May. Over the weekend of 19-20 May, the churches dedicated their services to a protest against the events of a week before, while a number of the townspeople proposed searching for dead bodies in abandoned mine workings around the city.

224. Within a week of the events on the University of Lubumbashi campus, a series of reports concerning an attack on the campus appeared successively in newspapers in Belgium, France and Zambia. On Tuesday, 22 May, foreign radio networks first began reporting about a massacre on the campus, citing a figure of 50 dead and attributing responsibility for the killing to the special security force, the DSP. About this same time as well, one foreign news service interviewed two of the mouchards hospitalized in South Africa who, from their sickbeds, gave accounts of a student riot on the Lubumbashi campus.

225. On 24 May, the Governments of Belgium and France, as well as the European Community, condemned the violence and called for an investigation. The Government of Belgium suspended preparations for an economic cooperation agreement between Zaire and Belgium and "froze the administrative measures that would lead to new State-to-State loans". The Belgian Prime Minister, Mr. Wilfried Martens, announced that preparations for a pact between the two States would "remain suspended so long as we do not know the truth". The Belgian Foreign Minister, Mr. Mark Esykens, called on Zaire to permit an independent inquiry into the matter. The Government of France suspended discussions for the planned 1991 summit of francophone States scheduled to take place in Zaire. The European Community followed a few days later with

protests to the Zairian Government concerning the events on the university campus and also called for an independent investigation into the matter. At the same time, the Zairian political opposition accused the DSP of being called in by Kinshasa to intervene on the university campus in response to alarming reports sent by Governor Koyagialo to his superiors.

226. In response to all of these protests and demands, the Zairian Foreign Minster reiterated the account of a student riot. On 25 May, the national parliament, the Parliamentary Assembly, voted to establish its own Commission of Inquiry. Its members flew down to Lubumbashi on 30 May, reportedly were recalled by the central authorities as they were about to investigate an alleged mass grave site, and returned to Kinshasa, where they submitted their report on 15 June and debated it in full assembly a few days later.

227. On 28 May, a day of mourning for the presumably massacred students closed down the city of Lubumbashi. The general strike of that day also paralysed the other chief towns in Shaba province. At the same time, on the evening of 28 May, Governor Koyagialo, in Kinshasa for a meeting of the provincial governors, repeated on national television the official story of a purely student riot, yielding only wounded. The broadcast was ill-received in Lubumbashi and, on the following day, a list of 80 dead began circulating around Lubumbashi. Governor Koyagialo returned to Lubumbashi the same day, 30 May, and granted an interview to a correspondent of Le Potential, which was published in its number of 13 June. The Governor again sustained the thesis of an inter-ethnic fracas, but extended the sphere of responsibility slightly by implicating the "friends and relations" of the Equatorial students from the town in the fighting, and explaining its motive as revenge for the attack on the mouchards on the night of 9-10 May.

228. On 31 May, Mr. Digekisa Piluka, who had fled to Zambia, returned to the city and reportedly wrote from "hiding" to several foreign consulates about the events on the university campus and his alleged involvement in them. He also, rather imprudently, turned copies of the letters over to several members of the general public, one or several of whom dutifully communicated them to the authorities who, in turn, arrested and imprisoned the author. During the first week in June, the city schools were largely empty of students and teachers alike. At that same time, a group of UNILU professors declared to the Parliamentary Commission of Inquiry that Governor Koyagialo bore a "heavy responsibility" for the events on the campus.

229. On 18 June, the Parliamentary Commission Report was made public in a nationally televised sitting of the Assembly. The next day, the official press agency, AZAP, disseminated to all Zairian diplomatic posts a communiqué announcing the Commission's conclusion that "a local, tribally based commando" was responsible for the attack of 11-12 May on the University of Lubumbashi campus, and directly accused the Provincial ANI Director, Mr. Gata, of having planned the attack and Governor Koyagialo of having abetted it by blockading the campus and cutting off its electricity. The bulletin also announced that the Parliamentary Assembly had resolved to suspend Governor Koyagialo from his functions and to deliver up for prosecution the Governor and a number of his provincial subordinates, together with two electricity company officials.

230. Meanwhile, the ongoing investigation of the Shaba Regional Assembly was finding its efforts at seeking out evidence of reinforcements to the "local commando" frustrated by the AND Provincial Director, Mr. Uba. At the same time, the investigatory efforts of the Shaba Prosecutor General, Mr. Ntesa Ne Mpemoziki, also were running into difficulties. When the Parliamentary Commission had approached him for information regarding his investigations, he replied that "his inquiry was at a standstill because the authorities concerned had refused in any way to work with him". Reportedly, Mr. Ntesa was obstructed in his attemmpts, among other things, to hear testimony from persons willing to relate information concerning the events on the university campus, as well as to take testimony from key provincial authorities.

231. Finally, sometime in the latter part of June, the President of the Republic, Mr. Mobutu, visited the city of Lubumbashi to consult with the Prosecutor General, among other things on the subject of the respective competencies of the civilian agencies of the State security apparatus and the judicial authorities. Shortly thereafter, Mr. Ntesa was recalled to Kinshasa for consultations and, in September 1990, was transferred to Kisangani, where he was to serve as the Prosecutor General of Upper Zaire. It was not until the autumn of 1990 that a replacement was named to assume the functions of Prosecutor General of Shaba province.

232. According to the information at his disposal, including his consultations with the Shaba Prosecutor General, Mr. Pataule Mibizabo Mantinti, in the month of May 1991, the Special Rapporteur is led to conclude that information gathered by the Regional Assembly Commission and under the instruction of Mr. Ntesa did not find its way into the files compiled by the Prosecutor General of Zaire to fashion the case State v. Koyagialo et al. for trial in the Supreme Court. Throughout that trial the Prosecutor continued to stress the linkage between Zaire's human rights record and international monetary assistance. 73/

B. Analysis of investigative findings

233. As stated in the introduction at paragraph 15 above, the three official documents which present investigative findings on the events of 8-10 May 1990 and 11-12 May 1990 are the Report of the Commission of Inquiry established by the Shaba Regional Assembly on the events which took place on the campus of Lubumbashi from 8 to 12 May 1990, the Report of the Parliamentary Commission of Inquiry on the events which took place on the campus of the University of Lubumbashi and the Judgement of the Supreme Court of Zaire in the matter State v. Koyagialo et al. Subsection 1 discusses the constitution of the Regional Assembly Commission of Inquiry and the disposition of its Report, subsection 2 the constitution of the Parliamentary Commission of Inquiry and the disposition of its Report, and subsection 3 the structure and disposition of the Judgement; subsection 4 analyses the outcome of the three investigative findings, taking into account the information at the disposal of the Special Rapporteur.

234. The Special Rapporteur would like to note that despite his requests to government authorities to furnish him with copies of the aforementioned documents, those authorities, for whatever reason, were not able to satisfy

his request. The Special Rapporteur, therefore, sought and received the documents from other sources. On the basis of inquiries he has made, the Special Rapporteur is confident of the integrity of the documents he reviewed.

1. Regional Assembly Report

235. To the extent the Special Rapporteur is able to determine, the Regional Assembly Commission of Inquiry was properly constituted, conducted its inquiry in a fair and thorough fashion and rendered its findings in proper form. In so far as the Regional Assembly Report is the only official document 74/ at once to have been issued on the basis of information close in time to the events in question and to have been compiled by individuals familiar with the persons, situational and geographic context and mores involved in or relating to the events in question, the probative value of its findings and conclusions should be seriously considered and its recommendations accorded due respect.

236. The Regional Assembly met on 14 May 1990, that is to say, the first working day following (and two days after) the events in question, together with representatives of the appropriate provincial organs and the Vice-Prime Minister and Commissioner of State for the Administration of the Territory and Decentralization. At that meeting, the Commissioner of State authorized the constitution of a Regional Assembly Commission of Inquiry "to shed light on the incidents which took place on the campus of Lubumbashi". 75/

237. In this connection, it should be noted that, in law, the provincial governor was hierarchically subordinate to the Commissioner of State. 76/ To a certain extent, the activities of the provincial governor also were subject to oversight by the regional assembly. 77/

238. These legal dispositions may be interpreted as suggesting that any ultra vires act or any act taken without respect for recognized administrative procedures by a provincial governor should be noted by the Regional Assembly and reviewed and, if need be, sanctioned administratively according to procedures administered by the Office of the Commissioner of State. 78/

239. From this, the Special Rapporteur may draw a number of conclusions, namely:

(a) That very soon after the events in question certain "higher authorities" were aware that something had occurred on the University campus which, at a minimum, had demonstrated that the functioning and administration of the province had been less than proper;

(b) That the Regional Assembly had a posteriori considered that what appeared to have been the outcome of a plan of action of the Provincial Governor deserved review by the hierarchical superior of the Governor;

(c) That the form which that review should take was an inquiry conducted under its own direction and upon the mandate of that hierarchical superior, the Commissioner of State.

240. Both procedurally and substantively, the action undertaken by the Regional Assembly and by the Commissioner of State responded to the

prescriptions of domestic and public international law to initiate investigations into any suspected incidence of summary, arbitrary or extrajudicial execution. Yet when the results of that inquiry were nearing completion for presentation to the Regional Assembly, the text of the Report was seized and quashed. According to information received by the Special Rapporteur this was done upon orders of the central autorities. 79/

241. Should it be that the Regional Assembly Report was so quashed, the Special Rapporteur notes that such action by government authorities would be in contravention of the State's obligations under the International Covenant on Civil and Political Rights as well a demonstation of its failure to respect the applicable principles embodied in the Universal Declaration of Human Rights and in the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, concerning the inherent right of every human being to life.

242. The Regional Assembly constituted a Commission of nine members, to which a tenth later was added. The Commission met on 17 May 1990 to establish a work-plan and a methodology of work. The Commission was expected to carry out its mission in ten days. It requested and received two extensions of its mandate, one on 28 May and one on 11 June 1990

243. The Regional Assembly Report sets forth (1) its work-plan and methodology, including an indication of difficulties encountered by the Commission in the execution of its mandate, (2) a day-by-day reconstruction of the events in question on the basis of information gathered during the course of the inquiry, (3) an analysis of that reconstruction, (4) an appreciation of the reconstruction, including an apportionment of responsibility, and (5) recommendations and suggestions.

244. At its conclusion, the Regional Assembly Report requests that its inquiry remain open in order to clarify (1) the possibility of the participation of external elements to reinforçe the commando. (2) the exact number of dead, (3) the mysterious disappearance of traces of the aggression, and (4) the establishment of responsibility of other persons who participated in the attack, either from afar or nearby. Finally, the Report made a recommendation that, on the basis of its factual findings, those responsible, inter alia, for causing an arbitrary deprivation of human life, should be brought to justice.

245. Of particular interest to the analysis of the investigative findings which follows below are sections 4 and 5 of the Regional Assembly Report. As a general matter, the Special Rapporteur would like to note that much of the information contained in the Regional Assembly Report corroborates or complements information which he has received.

2. Parliamentary Commission Report

246. To the extent the Special Rapporteur is able to determine, the Parliamentary Commission of Inquiry was properly constituted, conducted its inquiry in a reasonable fashion and rendered its findings in proper form. It should be noted that the Parliamentary Commission undertook to constitute itself in the midst of considerable national and international media reportage on the so-called massacre at Lubumbashi and immediately following the announcement by numerous European States of a suspension or planned suspension of monetary and technical assistance to the Republic of Zaire.

247. A decision of the full Parliamentary Assembly of 25 May 1990 established a Parliamentary Commission of Inquiry to make an on-site investigation of the events which took place at the University of Lubumbashi campus from 9 to 12 May 1990. The Commission comprised 12 members, assisted by two other persons, members of the legislative Council. The Commission received its official mandate on 29 May 1990 and arrived in Lubumbashi on 30 May 1990, that is to say nearly three weeks after the events in question. The Special Rapporteur does not have precise information as to when the Parliamentary Commission ceased its on-site investigation. Nevertheless, the Special Rapporteur can deduce that the Commission conducted its inquiries during late May and early June 1990.

248. The Commission delivered its findings in the form of the Parliamentary Commission Report to the Parliamentary Assembly on 15 June 1990. The Report was debated by the full Parliamentary Assembly shortly after its delivery to that body. The Special Rapporteur was unable to obtain a recording of the proceedings of that debate and, thus, is unable to comment upon any analysis or conclusions which the Parliamentary Assembly may have drawn from the Report.

249. The Special Rapporteur has received information from several reliable sources that the Commission was ordered to terminate its investigation and was recalled to Kinshasa just as it, or one of its subcommissions, was planning to depart the city of Lubumbashi to investigate allegations of a mass grave site nearby. According to those same sources, the Commission was ordered and recalled to Kinshasa precisely because it had obtained credible information regarding a mass grave site and was in the process of embarking upon an investigation of the same.

250. If this be the case, the Special Rapporteur notes that such action by Government authorities would be in contravention of the State's obligations under the International Covenant on Civil and Political Rights, as well as a demonstration of its failure to respect the applicable principles embodied in the Universal Declaration of Human Rights and in the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, concerning the inherent right of every human being to life.

251. The Parliamentary Commission Report comprises (1) an introduction, (2) a series of so-called appendices in which are set forth the summaries of or excerpts from declarations of all persons heard, interviewed and contacted, and (3) recommendations and suggestions, in which section is included, on the basis of the information the Commission had gathered, (a) a summary of the facts, (b) an appreciation of the "preparation of the aggression and attitude of the local authorities", (c) an appreciation of the "massacre of the students and deaths", (d) an appreciation of the "material destruction of the campus", and (e) an apportionment of responsibility.

252. The Report concludes by referring to the attention of the judicial authorities, in accordance with the law in force, the following persons: Mr. Elonga Nkanda, Mr. Bongo Nganzo, Lieutenant Makunga Nsumbu, Major Lokombe Bomokande, Mr. Aloni Komanda and Captain Bongonda Lilalanga.

253. The Report further notes that, under law, certain other persons enjoy immunity from prosecution and requests the Office of the Provincial Prosecutor

to undertake the steps necessary with the higher authorities to allow judicial investigation of those persons to go forward. These persons are: Governor Koyagialo Ngbase te Gerengbo, Colonel Lokiyo Lianza, Mr. Gata Lebo Kete and Mr. Uba Baligbia.

254. Despite the significant probative value of some of the information the Parliamentary Commission uncovered, the Commission analysed its findings through the optic of the prevailing government theory of the so-called massacre at Lubumbashi, namely, that responsibility for those events was localized at the provincial level, resting on Governor Koyagialo and his several subordinates, among whom the ANI Provincial Director, Mr. Gata, bore a particular responsibility for having urged and inspired a counterattack of Equatorial upon non-Equatorial students on the night of 11-12 May 1990 on the UNILU campus. The Parliamentary Commission Report suggested that, Mr. Gata aside, the key provincial civil and military authorities were responsible merely for having failed to fulfil their obligations to protect the population for which they were responsible. In civil law, this would constitute the delict of non-assistance to persons in danger.

3. Judgement

255. The Supreme Court of Zaire, in combined chambers and sitting in criminal jurisdiction as a court of first and last instance, 80/ rendered its judgement in the matter State v. Koyagialo *et al.* on 16 May 1991 following proceedings which were, according to all accounts received by the Special Rapporteur on this issue, conducted in a fair and proper fashion.

256. The Court had before it three files compiled under the instruction of the Prosecutor General of the Republic of Zaire. These were (1) file RP/29/CR which contained information concerning certain major and minor provincial civil and military authorities allegedly involved in the events which transpired on the University of Lubumbashi campus during the period 8-12 May 1990, (2) file RP/30/CR which contained information concerning those same major and minor provincial civil and military authorities, together with additional major and minor civil authorities and so-called student commando members, all of whom allegedly were involved in the events of 8-12 May and, in particular, in the events of 11-12 May 1990 on the University of Lubumbashi campus relating to the 34 wounded students named and the one deceased student named, 81/ and (3) file RP/31/CR which contained information concerning students, allegedly members in the *Syndicat national solidarité* and who allegedly were involved in the events of 8-10 May 1990 and, in particular, in the events of the night of 9-10 May 1990 on the University of Lubumbashi campus relating to wounding of three students named (the so-called *mouchards*).

257. The principal charge brought by the Prosecutor General against the provincial civil and military defendants cited in file RP/29/CR was non-assistance to persons in danger, namely, to the 34 wounded students named and the one deceased student named.

258. The principal charges brought by the Prosecutor General against the student defendants cited in RP/30/CR were criminal participation in the commission of manslaughter (unintentional homicide), namely of the one deceased student named, criminal participation in the commission of assault

and battery and assault and battery, namely of the 34 wounded students named, criminal participation in the commission of arson and arson and criminal participation in the commission of malicious destruction of property and malicious destruction of property.

259. Under the same file, the Prosecutor General charged individually with criminal participation in a so-called security meeting and, as result of the decision taken at that meeting, namely the cutting of the electricity on the University of Lubumbashi campus, rendering assistance to the commission of those crimes charged against the student defendants cited in file RP/30/CR, the following defendants: Messrs. Koyagialo Ngbase te Gerengbo (Governor of Shaba Province), Aloni Komanda (Rector, University of Lubumbashi), Bongonda Lilanga (Captain, commanding officer of the Gendarmerie of the city of Lubumbashi), Lokiyo Lianza (commander, Ninth Military Circumscription and acting Commander, First Military Region), Uba Baligbia (Provincial Director, National Documentation Agency [AND]) and Lokombe Bano Kande (Major, commanding officer of the Civil Guard). 82/

260. The Prosecutor General charged individually with incitement by writing, namely report No. 05/ANI/D7/0000271/90, addressed to the Governor of Shaba Province and dated 11 May 1990, and rendering material assistance, namely the provision of masks, to the commission of those crimes charged against the student defendants cited in file RP/30/CR, the defendant, Mr. Gata (Provincial Director, National Immigration Agency [ANI]). 83/

261. The Prosecutor General charged with rendering assistance, namely organizing the cutting of the electricity on the campus of the University of Lubumbashi, to the commission of those crimes charged against the student defendants cited in file RP/30/CR, the defendants, Messrs. Elonga Nkanda, Vita Landu and Tshitenge Yakasoko (officials of the National Electric Company). 84/

262. The Prosecutor General charged with rendering assistance, namely the posting of Civil Guard members around the electricity substation, to the commission of those crimes charged against the student defendants cited in file RP/30/CR, the defendants, Messrs. Lokombe Bano Kande (Major, commanding officer of the Civil Guard) and Makunga Nsumbu (Operations Officer, Civil Guard). 85/

263. The principal charges brought by the Prosecutor General against the defendants cited in RP/31/CR were subversion against the State, criminal participation in incitement to commit assault and battery and assault and battery of the three students named, criminal participation in incitement to commit attempted murder and attempted murder and attempted murder of the three students named, criminal participation in incitement to commit arson and arson of property of the three persons named, and criminal participation in incitement to commit malicious destruction of property and malicious destruction of property of the three students named. 86/

264. In addition to the other charges cited in RP/31/CR, the Prosecutor General charged with causing to be issued and issuing false documents, namely an identity card and laissez-passer, the defendant, Mr. Digekisa Piluka (President, *Syndicat national solidarité*). 87/

265. Of the seven defendants cited in file RP/29/CR, all were present before the Court and represented by counsel. Of the 29 defendants cited in file RP/30/CR, the 11 provincial civil and military defendants appeared before the Court and were represented by counsel. Two of the student defendants eventually convicted and sentenced by the Court by default were listed as being "at liberty", although they never appeared before the Court, nor were they represented by counsel. One of the student defendants eventually acquitted by the Court was listed as being "at liberty" and, apparently, never appeared before the Court or was represented by counsel. The remaining 15 student defendants were listed as being "fugitive". They never appeared before the Court, nor were they represented by counsel. By its Judgement the Court severed their cases and retained jurisdiction over them. 88/

266. Of the 27 defendants cited in file RP/31.CR, only Mr. Digekisa Piluka appeared before the Court and was represented by counsel. The remaining 26 defendants never appeared before the Court, nor were they represented by counsel. By its Judgement the Court severed their cases and retained jurisdiction over them.

267. The proceedings before the Supreme Court opened on 25 March 1991 with objections to the Court's exercise of jurisdiction over all defendants except Mr. Koyagialo. 89/ Following argument on the issue, the Court affirmed its proper exercise of jurisdiction on 27 March 1991. The Court continued to hear testimony and to receive depositions and material evidence. On the basis of the information at his disposal, the Special Rapporteur notes that a number of persons who may bear responsibility for their involvement in the events of 8-12 May 1990 on the University of Lubumbashi campus were not charged by the Prosecutor General and, apparently, did not give witness testimony before the Court. 90/

268. On 30 March 1991, the Court procured service on the defendants cited in file RP/29/CR on a charge of conspiracy. Defence counsel challenged, *inter alia*, the irregularity of service and the competence of the court to requalify the facts presented in file RP/29/CR, which facts had supported a charge of non-assistance to persons in danger. By its Judgement, the Court affirmed the propriety, under law and jurisprudence, of its requalification of the facts, including the preservation of defendants' right of defence. 91/

269. Throughout April, the Court continued to hear testimony and to receive documentary and deposition evidence. On 1 May 1991, Messrs. Digekisa Piluka and Tshitenge Yakasoko escaped from Makala Central Prison, Kinshasa, where they were being held in preventive detention and fled the jurisdiction.

270. At some point before the closing argument, the Prosecutor General of the Republic added, apparently by oral argument, to the charges under file RP/30/CR, a charge of murder. On the basis of the information at the disposal of the Special Rapporteur, the Court does not seem to have raised any objection thereto. Nevertheless, the Court did not adopt this added charge in its Judgement, and passed over it in silence.

271. Before passing judgement and sentence, and on the motion of the Prosecutor General, the Court severed most of the cases of the student defendants cited in files RP/30/CR and RP/31/CR, maintaining jurisdiction over

their cases. The Court also rejected a request for an on-site inspection of the University of Lubumbashi campus and its environs as well as for expert testimony on the military equipment submitted in evidence. 92/

272. In addition, the Court declared that there was no contradiction between the criminal charge of non-assistance to persons in danger [a delict] and the criminal charge of conspiracy (a crime) 93/ and all of the other charges which consequently resulted, 94/ in so far as the facts contained in file RP/29/CR could support the charge of non-assistance to persons in danger, as well as the charge of conspiracy and all of the other charges brought by the Prosecutor General on the basis of the facts contained in file RP/30/CR.

273. By this statement the Court, among other things, justified its unified appreciation of the facts supporting the crimes charged against the provincial civil and military authorities and against the students in file RP/30/CR and the facts supporting the delict of non-assistance to persons in danger charged against the provincial civil and military authorities in file RP/29/CR. Or, in other words, the Court justified its making a single factual pool out of the information contained in files RP/29/CR and RP/30/CR, and using this unified body of facts, together with testimonial, deposition and documentary evidence presented to the Court, to charge the civil and military defendants of having conspiratorial links with the so-called student assailants and, consequently, to pass judgement on that charge.

274. The Court acquitted Messrs. Loliko Bonkono, Aloni Komanda, Makunga Nsumbu, Elonga Nkanda, Vita Landu and Tshitenge Yakasoko. The Court convicted all of the remaining provincial civil and military authorities, except Mr. Bongonda, on the charges against them. The Court convicted Mr. Bongonda only on the charge of non-assistance to persons in danger. The Court convicted Messrs. Payou Bell and Tokongba Ntete *in absentia* on all charges against them. The Court also convicted *in absentia* Mr. Digekisa Piluka on all charges against him. 95/

275. The Court then passed the following sentences: Messrs. Payou Bell and Tokongba Ntete: life imprisonment; Mr. Koyagialo Ngbase te Gerengbo: 15 years' imprisonment; Mr. Gata Lebo Kete: 13 years' imprisonment; Mr. Lokiyo Lianza: 12 years' imprisonment; Mr. Lokombe Bano Kande: 11 years' imprisonment; Mr. Bongonda: 3 years' imprisonment and a fine of 50,000 Zaires or, in the alternative, an additional 2 months' imprisonment; Mr. Digekisa Piluka: 13 1/2 years' imprisonment and a fine of 1,000 Zaires or, in the alternative, an additional 1 month's imprisonment. 96/

276. Finally, the Court rendered a series of orders in connection with the final disposition of the matter before it. The Court ordered the immediate arrest of Messrs. Payou Bell, Tokongba Ntete and Digekisa Piluka. It ordered the confiscation of the military effects and the bottle of *chanvre* (a hallucinogenic drug) allegedly collected in a UNILU dormitory hall and the dormitory rooms of several students on 13 May 1990 by FAZ officers, together with the masks presented to the Court and allegedly purchased by Mr. Gata for use by the student assailants. The Court ordered the destruction of the bottle of *chanvre*, the return to FAZ of some of the military equipment and the return to Mr. Gata of the masks. Finally, the Court ordered each of the nine defendants sentenced to pay a portion of the Court costs.

4. Conclusions

277. Of the three official documents reflecting investigative findings of Zairian authorities, and for the reasons stated at sections III.B.1 and 2 above, the Special Rapporteur believes that the Regional Assembly Report offers the best perspective upon and most complete information about the events which transpired on the University of Lubumbashi campus during the period 8-12 May 1990. Consequently, the Special Rapporteur intends to structure this section of his report around the Regional Assembly Report, taking note of where the Judgement and the Parliamentary Commission Report pick up or leave aside findings and suggestions made by the Regional Assembly Commission in its Report.

(a) Events of 9-10 May 1990

278. Of the three investigative findings, only the Judgement specifically treated the question of apportionment of responsibility for the events of 9-10 May 1990 on the University of Lubumbashi campus. By its Judgement, the Court convicted and sentenced Mr. Digekisa, *inter alia*, on charges of criminal participation in incitement to commit assault and battery and assault and battery of the three so-called *mouchards*, and criminal participation in incitement to commit attempted murder and attempted murder of the same three persons.

279. On the basis of the information at his disposal, the Special Rapporteur has reason to believe that Mr. Digekisa Piluka does bear some of the responsibility for threats made upon the life and physical integrity of students, including the three so-called *mouchards* named in the Judgement, during the course of the events of 9-10 May 1990.

280. The remaining defendants listed under file RP/31/CR were not before the Court. Consequently, the Court severed their cases, retaining jurisdiction over them. The Special Rapporteur has received specific information concerning at least some of the defendants listed under file RP/31/CR which leads him to believe that those defendants, as well, bear responsibility for threats made upon the life and physical integrity of students, including the three so-called *mouchards* named in the Judgement, during the course of the events of 9-10 May 1990.

(b) Events of 11-12 May 1990

281. The Regional Assembly Commission viewed the events which took place on the University campus during the period 8-12 May 1990 as a culmination of factors both distant and close in time. The Special Rapporteur believes such an appreciation to be justified. In a similar manner, he has tried in the present report to demonstrate that an understanding of context, namely the formal structure and actual functioning of the State at all levels, is critical to an understanding of the events in question. Nonetheless, the Special Rapporteur has reason to believe that the Commission members were not wholly at liberty to voice their opinions on certain matters. Among these was an express attribution of responsibility to all quarters where it lay. Yet, by means of questions and strong suggestion, the Commission members were able to point the finger of responsibility in the direction of certain provincial, as well as central, authorities.

282. In considering the distant causes of the events in question, the Regional Assembly Report noted the political structure and operation of the campus, including the ethnic composition of the campus authorities and of members of the campus security apparatus (predominantly Equatorial), and the deteriorating living conditions of the non-privileged students (predominantly non-Equatorial), that is to say, the majority of campus inhabitants, in recent years. 97/

283. In considering the immediate causes, the Regional Assembly Report noted the effects of the President's speech of 24 April 1990, including the resulting political activism on the campus in anticipation of a long-awaited opening to democracy and the dismantling of the MPR and JMPR structures, the concentration of provincial political, military and security powers in the hands of officials originating from the same province (Equateur), the biased attitude of those officials with regard to the events unfolding on the University campus, the subsequent falsification of their reports (transmitted to the central authorities) regarding those events and the incitement to vengeance on the part of those officials and others, including professors, townspeople and military officials (all of Equatorial origin). 98/

284. In recounting the results of their investigations, the Regional Assembly Commission addressed four areas: (1) the existence vel non of a commando and the possible composition of that commando, (2) the number of wounded, (3) the number of dead and missing and (4) attribution of responsibility to certain named actors in the events of 8-12 May 1990. 99/

285. The Regional Assembly Report affirmed the existence of a commando "in the sense that there was an organized group of individuals determined to perpetrate acts of aggression in a given place, that is to say, the campus of the University of Lubumbashi". The Report cited to information received from academic, civil and military sources in support of their assertion. 100/

286. The Parliamentary Commission Report affirmed an attack on the University of Lubumbashi campus on the night of 11-12 May 1990. 101/ The Report did not essay an explicit description of the composition of that commando. 102/

287. The Court, obiter dicta, addressed the question of a "commando". 103/ For lack of evidence before it, the Court concluded that it could not confirm the presence of external elements among the "criminal band which operated during the night of 11 to 12 May 1990 [and which] was composed of a group of students surrounded by military or paramilitary elements". 104/

288. On the basis of the information at his disposal, the Special Rapporteur considers that the Court did not have before it any of the military or paramilitary elements of the "commando" to which it referred. Apparently, however, the Court did convict and, by its Judgement, sentence in absentia, two of the student members of the "commando".

289. The Regional Assembly Report concluded that commando was comprised of students from Equateur province (noting 25 names), members of the Civil Guard, so-called friends and relations of the three molested mouchards and probably members of FAZ. The Report noted the point of entry onto the campus of the commando (the track road running from the Kimbembe cemetery and the path

running from the Kimbembe pumping station), the appearance of the commando members (physically robust, masked and made-up, unrecognizable to most of the student population and speaking a language uncommon on campus) and their systematic work methods, including the destruction of incriminating evidence. The Report noted further that the above-cited details were furnished to the Commission by Governor Koyagialo who claimed to have received them from students who took part in the operation. 105/

290. The Regional Assembly Report then posed the question as to whether the local commando was reinforced by troops coming from outside of the area. The Report noted that its investigations of Air Zaire and SEP-Zaire (suggesting the arrival of some second aircraft) and the national air transport authorities (Régie des voies aériennes [RVA]) 106/ yielded no results. 107/

291. Nevertheless, the Regional Assembly Report did note that witness testimony attested to the presence on the tarmac upon the landing at 19.00 hours of the DC-10 Air Zaire flight from Kinshasa of one minibus and two cars. The Report signalled the fact that the minibus was of the same type as that belonging to AND, and that these vehicles together transported seven persons from the airport. Finally, the Report noted that when the Commission tried to gather additional information relating to the reason for the delayed arrival of the DC-10 and to the identity of the seven passengers, its efforts were obstructed by Mr. Uba, Provincial Director of AND. 108/

292. The Special Rapporteur has received information of a similar character to that uncovered by the Commission during the course of its investigation. Moreover, the Special Rapporteur has substantial reason for believing that some of his sources also had related their information to the Shaba Regional Assembly Commission of Inquiry.

293. On the basis of a survey of all the medical facilities in Lubumbashi, the Regional Assembly Commission was able to gather the names of 38 wounded students, 9 resulting from the events of 9-10 May 1990 and 29 resulting from the events of 11-12 May 1990. The Regional Assembly Report listed those names, noting further that four of the wounded were dispatched to South Africa for intensive care treatment. 109/ The Parliamentary Commission Report, on the basis of its visits to three hospitals in Lubumbashi, quoted a figure of 29 students treated or hospitalized during the period 9-12 May 1990. 110/ The Judgement listed the names of 34 students who were wounded on the night of 11-12 May 1990. 111/ The Special Rapporteur has no reason to believe that a substantial number of wounded requiring medical attention as a result of the operation, on the night of 11-12 May 1990, of the first attack group were treated elsewhere than locally.

294. As to the question of the dead, the Regional Assembly Report noted that the Commission was able to confirm only one death, that of Mr. Ilombe wa Ilombe, who expired in hospital as a result of a cranial fracture. The Report listed the names of two persons presumed dead, together with the names of 19 other persons about whom there was not sufficient information to determine their status. The Report, therefore, classified these persons as missing. 112/

295. Finally, the Report stated that the Commission wrote to the Prosecutor General of Lubumbashi requesting him to communicate to the Commission

information resulting from subsequent inquiries undertaken with respect to the dead and the missing. 113/ In his discussions with the Special Rapporteur, the present Prosecutor General of Lubumbashi denied having the names of any students, other than the name of the only officially recognized decedent.

296. The Parliamentary Commission Report neither confirmed nor denied the existence of deaths other than one unnamed person who died in hospital as a result of his wounds. 114/ However, in discussing the question of "the massacre of the students and deaths", the Report did note various factors which well may have prevented the Parliamentary Commission from gathering more complete information on the question of deaths. The Report therefore, "request[ed] that the inquiry remain open on this point". 115/

297. The Court, in obiter dicta, addressed the question of the "number of deaths and existence of a mass grave". 116/ For lack of evidence before it, 117/ the Court concluded that nothing would permit it either to confirm or deny that there was a massacre. 118/ Similarly for lack of evidence before it, 119/ the Court concluded that nothing would permit it either to affirm or negate that loss of life exceeded the one officially recognized death. 120/

298. On the basis of information at his disposal, the Special Rapporteur has reason to believe that approximately 10 to 12 persons lost their lives to the first attack group. He does not have precise enough information to be able to attack particular names to those deaths. He does, however, attach as Annex IV to the present report a list of persons allegedly dead or missing following the events of 11-12 May 1990, from which those extrajudicially executed during the course of those events possibly may be drawn.

299. Following its appreciation of the findings it had made with respect to the events of 8-12 May 1990 on the University of Lubumbashi campus, the Regional Assembly Commission apportioned responsibility, 121/ among other things, for the loss of life occasioned by those events. 122/

300. The complaints against the key provincial civil and military authorities cited in the Regional Assembly Report essentially can be reduced to five: (1) concentration of provincial power in the hands of authorities deriving from Equateur province, (2) participation in the so-called security meeting (and, in the case of Governor Koyagialo, organization of that meeting) on the morning of 11 May 1990 at which the decision was taken to cut the electricity on the campus, (3) failure properly to fulfil their administrative or military responsibilities, (4) non-assistance to persons in danger and (5) obstruction of justice. 123/

301. Through its findings, the Report established that the provincial civil and military authorities who participated in the so-called security meeting were those same authorities who failed properly to fulfil their administrative or military duties, among other things, by cutting the electricity on the UNILU campus and who, despite being apprised of both of a forthcoming and the ongoing attack against the students on that campus, failed to take any meaningful action against these threats to the life and physical integrity of the UNILU students. The Report further noted that those same provincial civil and military auithorities derived from Equateur province, the province from which the President of the Republic derives, as did those who participated in

the attack. Finally, some of those same provincial civil and military authorities obstructed attempts by the Regional Assembly Commission to conduct its inquiry into the events in question.

302. In attributing responsibility for the loss of life occasioned by the events of 11-12 May 1990 on the UNILU campus, the *Regional Assembly Report* suggested that the results of these findings necessarily demonstrated a causal relationship between the participants in the 11 May 1990 security meeting and their subordinates and the "commando" which operated on the UNILU campus later that night. The Regional Assembly Commission of Inquiry plainly concluded that the striking inactivity of the provincial authorities throughout the course of the attack or attacks upon the UNILU campus represented precisely a part of their assigned role in an overall conspiracy to assault the campus.

303. The Special Rapporteur may conclude that this is what the Court meant when it stated in the *Judgement* that "there is no contradiction between the infraction of non-assistance to persons in danger and that of conspiracy *and all of the other [charges] which were its consequence*". 124/

304. On the face of the *Judgement*, the Special Rapporteur is not wholly convinced that the Court succeeded in establishing conspiratorial links between the provincial civil and military defendants and the so-called student assailants. Nevertheless, the Special Rapporteur does not pretend to be an expert on Zairian law. According to his understanding of the manner in which the Court requalified the facts and pronounced convictions on the basis of that requalification, the Court would be justified under national law to so act where the presumptions arising from the single factual pool, including the testimonial documentary and deposition evidence presented to the Court are, between and among them, sufficiently serious, precise and corroborating.

305. The Special Rapporteur was unable to review either the trial files or the procès-verbaux in the matter State v. Koyagialo *et al*. Moreover, by its very nature, a civil law judgement does not set forth in great detail the factual and evidentiary basis upon which that judgement rests. Thus, the Special Rapporteur is not in a position to address the manner in which the Court reached its conclusions. However, based upon the information at his disposal, the Special Rapporteur has strong reason to believe that the provincial civil and military authorities convicted and sentenced by the *Judgement*, as well as other provincial civil and military authorities, together with certain national civil and military authorities, including the President of the Republic, very well may bear responsibility for the loss of life which resulted from the events of 8-12 May 1990 on the University of Lubumbashi campus.

IV. CONCLUSIONS AND RECOMMENDATIONS

306. In the introduction and section I of his present report, the Special Rapporteur observed, based upon the information at his disposal, that he is able to suggest to the Government of Zaire that certain categories of his mandate relating to allegations of deaths and of threats against the life and physical integrity of persons may deserve to be invoked in connection with the events of 8-12 May 1990 on the University of Lubumbashi campus, passed upon by the Supreme Court of Zaire in the matter State v. Koyagialo *et al*.

307. The Special Rapporteur cited, in particular, those categories 125/ relating to allegations of deaths which took place as a result of assault or abuse of force by police, military or other governmental or para-governmental forces (category 2.2), and as a result of assault or abuse of force by paramilitary groups under official control (category 2.3), together with allegations of death threats made by members of police, military or other governmental or para-governmental forces (category 3.1), by individuals or paramilitary groups under official control or acting with official collusion or acquiescence (category 3.2), and by individuals or groups of individuals not under government control (category 3.3).

308. The Special Rapporteur further observed that, in accordance with the obligation of the Government of Zaire under the International Covenant on Civil and Political Rights and the principles embodied in the Universal Declaration of Human Rights and the resolution on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, those allegations should be investigated and the results of those investigations should be communicated to him. The Special Rapporteur indicated his willingness to discuss the present report with the Government of Zaire, as well as to communicate to the appropriate authorities such information at his disposal as would facilitate the Government's compliance with its legal obligation to assure protection of the right to life. This obligation includes a Government's duty to ensure that responsibility for loss of life and threats against the life and physical integrity of persons be fully investigated and that, on the basis of those investigations, all persons responsible therefor be brought to justice.

309. The Special Rapporteur will reflect in his report to the forty-ninth session of the Commission on Human Rights all information with which the Government of Zaire provides him, together with any comments the Government of Zaire may think it appropriate to make, in connection with his present report. The Special Rapporteur reiterates that, among other things, the aim of establishing such a dialogue with the Government is to prevent the further occurrence of extrajudicial, summary or arbitrary executions.

310. On the basis of the information at his disposal and as reflected in the present report, the Special Rapporteur has strong reason to believe that the Government of Zaire ordered or authorized the operation of two attack groups on the University of Lubumbashi campus on the night of 11-12 May 1990, as a consequence of which at least 10 to 12 university students lost their lives and at least 34 more were seriously wounded. On the basis of the information at his disposal and as reflected in the present report, the Special Rapporteur also has strong reason to believe that, during the course of the events of 9-10 May, the life and physical integrity of numerous persons, among these, the three so-called mouchards, was threatened.

311. In connection with the above, the Special Rapporteur recalls to the Government of Zaire its obligation to comply with the principles set forth in the Code of Conduct for Law Enforcement Officials and in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Moreover, and in connection with the apparent failure of the Government to comply with the aforementioned standards, the Special Rapporteur wishes further to recall to the Government of Zaire the obligation it has undertaken by its ratification

of the International Covenant on Civil and Political Rights to ensure respect for the right to life, to ensure that this right is protected by law, and to ensure that no one is arbitrarily deprived of his or her life. Finally, and taking into account all of the foregoing, the Special Rapporteur wishes to refer the Government of Zaire to its obligations under the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the principles set forth in the resolution on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions to investigate, to prosecute, to impose sentences and to ensure that those sentences are carried out against persons responsible for failing to guarantee respect for the right to life.

312. On the basis of the information at his disposal, including the judgement of the Supreme Court of Zaire in the matter State v. Koyagialo et al. (Judgement), the Special Rapporteur has reason to believe that the disposition reached in the Judgement did not fully discharge the obligation of the Government of Zaire under the standards cited immediately above. The Court did convict and sentence a number of provincial civil and military authorities, together with persons acting under their control, for their involvement in the events in question and, in particular, for the loss of life of one student and threats against the life and physical integrity of 34 additional students, occasioned by the attacks on the University of Lubumbashi campus on the night of 11-12 May 1990. The Court did convict and sentence one student for his involvement in threats made against the life and physical integrity of the three so-called mouchards on the University of Lubumbashi on the night of 9-10 May 1990.

313. However, the Supreme Court of Zaire itself conceded that, owing to a lack of elements in its files, compiled under the instruction of the Prosecutor General of Zaire, a number of questions still remain open with respect to the factual circumstances surrounding the events which transpired on the University of Lubumbashi campus during the period 8-12 May 1990 and responsibility relating thereto in connection with loss of life and threats against the life and physical integrity of persons.

314. Among the open questions of relevance to the mandate of the Special Rapporteur are the authorized presence of law enforcement officials and persons acting under their control among those who assaulted the university campus on the night of 11-12 May 1990, responsibility for the authorization of the excessive use of force by those law enforcement officials and the persons acting under their control, and the loss of life and threats against the life and physical integrity of persons resulting from such excessive use of force. Equally of relevance to the mandate of the Special Rapporteur with respect to the events of 9-10 May 1990, is the investigation of the factual circumstances surrounding those events and the attribution of responsibility to those who threatened the life and physical integrity of persons in connection with those events.

315. On the basis of the information at his disposal, the Special Rapporteur is led to conclude that the Supreme Court of Zaire, in its judicial disposition of the events in question, did not have in its files sufficient elements and did not have before it all of the defendants needed to be able definitively to dispose of those open questions. With reference to the

information at his disposal and, in particular, to that recounted in sections III.A.4 and III.B of the present report, the Special Rapporteur has strong reason to believe that those missing elements were withheld from the files presented to the Court and those missing defendants were not brought before the Court in an attempt by the Government of Zaire to limit responsibility for the loss of life and threats against the life and physical integrity of persons in connection with the events on the University of Lubumbashi campus during the period 8-12 May 1990 to certain provincial civil and military authorities and persons acting under their control. Accordingly, the Special Rapporteur, with reference to those standards which form the legal justification of his mandate and are applicable to his review of the events in question, would request the Government of Zaire to re-open its investigation into those events and to communicate the results of that re-opened investigation to him. In connection with the latter, the Special Rapporteur would request the Government of Zaire to furnish him with any and all medical records from all medical facilities in Zaire and in third States, including South Africa, where victims or alleged victims of the events of 9-10 and 11-12 May 1990 were treated.

316. In conclusion, the Special Rapporteur wishes to express his gratitude to all who assisted him in the preparation of his report, including those who furnished him with information, and the staff of the Secretariat of the Centre for Human Rights.

Notes

1/ It should be noted that, wherever possible, the Special Rapporteur uses the past tense to refer to procedures and structures prevailing during the period of the events in question. It is the expectation of the Special Rapporteur that, given the current situation in Zaire, such procedures and structures are being reviewed with the aim of their reformation. The Special Rapporteur has chosen to translate the term "région" as "province". Other expressions of that term are similarly translated. The only exception to this choice is the use of "Regional Assembly" to translate "L'Assemblée régionale", owing to the fact that the English translation of that term has achieved a certain currency in connection with the so-called Regional Assembly Report. The full title of the Report is the Report of the Commission of Inquiry established by the Regional Assembly of Shaba on the events which took placed on the Campus of Lubumbashi from 8 to 12 May 1990 (Rapport de la Commission d'enquête designée par l'Assemblée regionale du Shaba sur les événements survenus au campus de Lubumbashi du 8 au 12 mai 1990).

2/ The Special Rapporteur notes that while the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were formalized as a coherent body of principles after the events in question, that formalization largely represented a codification of emergent public international law standards.

3/ Constitution, article 13 (1983). This version of the Constitution was in force at the time of the assault on the UNILU campus. For the current version, which was in force at the time of the trial in the matter, State v. Koyagialo et al., see Constitution, article 13, as amended by Law No. 90-002, dated 5 July 1990.

4/ The Special Rapporteur recognizes, not by way of excuse or justification but rather by way of explanation, that the reporting of such violations may have exposed the individual to threats against his or her life and physical integrity, as well as to the threats against the life and physical integrity of members of his or her family.

5/ See: M. Mutua and P. Rosenblum (Lawyers Committee for Human Rights), Zaire: Repression As Policy (A Human Rights Report) (1990) for a more complete exposition of the historical overview, as well as for more detailed information on the structure and practical operation of the State security apparatus.

6/ The three principal drafters of the letter which, among other things, called upon President Mobutu to respect and realize in practice democracy and the rule of law, were Messrs. Tshisekedi wa Malumba, Ngalula Pandajila and Makanda Mpinga Shapantu.

7/ See: La Semaine, 25 April 1990, for the complete text of the speech.

8/ See: La Semaine, 4 May 1990, for the complete text of the speech.

9/ See Constitution, as modified by Law No. 90-002, dated 5 July 1990. The text of the Constitution may be found in Official Journal of the Republic of Zaire (Special Issue) (July 1990).

10/ Cf. infra, section III.A. The immediate reaction of the UNILU students to President Mobutu's 24 April speech was to declare the abolition of the JMPR structure prevailing on campus. The structure was, as a formal matter, so abolished. Based upon the information at the disposal of the Special Rapporteur, at least several bits of that structure continued to survive in practice, the most important of those being the intelligence liaison functions of the campus President of the JMPR and the JMPR enforcement arm, the Brigade estudiantine.

11/ See Constitution, as amended by Law No. 90-002, dated 5 July 1990, at appendix (setting forth the justifications of Law No. 90-002, dated 5 July 1990), which, among other things, states that "[a]s a consequence of the abolition of the institutionalization of the MPR and the removal of all reference thereto, certain articles of the Constitution are abrogated, namely, articles 32, 33, 35, 41, 55, 56, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70 and 71".

12/ See Constitution, article 36.

13/ See article 35 of the 1983 Constitution, in force during the period of the events in question.

14/ 1984-1991: Septenant de maturité, 7 LETTRE DE L'ECOLE DU PARTI 15-16 (June-July 1984). The LETTRE was compiled by the Institut Makanda Kabobi, the official training institution of the cadres of the MPR.

15/ See, e.g. Nguz a Karl-i-Bond, Testimony before the United States Congress, Subcommittee on Africa, House Committee on Foreign Affairs (1981). Among other things, Mr. Nguz stated that the security forces monitor the private affairs of people in Government rather than the threat of foreign incursions, which is their legal mandate. Mr. Nguz noted that the security forces know "exactly what time I left my house or what time I came back". Mr. Nguz currently holds the position of Prime Minister of the Republic of Zaire.

16/ See, e.g. P. Rosenblum, "Constructing the Authoritarian State: Zaire" (unpublished manuscript in the files of the Special Rapporteur), citing an interview with Professor Vunduawe te Pemako, a long-time leading figure in the MPR, in Kinshasa (August 1989):

> "What has characterized each of these [security] forces is its independence with respect to other forces and its direct dependence on the President. This has been an important element in President Mobutu's version of 'divide and rule'. One high-level official of the MPR described the multitude of security forces as behaving like the jealous wives of a polygamous man."

17/ Ordinance-Law 82-006, date 25 February 1982, concerning the territorial, political and administrative organization of the Republic, at article 6.

18/ See ibid., article 7.

19/ Ibid., article 35.

20/ Ibid., article 35, paragraph 2 (1).

21/ Ibid., article 35, paragraph 2 (2).

22/ See ibid., article 35, paragraph 2 (3), (6), (7) and (8).

23/ Ibid., article 25, paragraph 2 (5).

24/ Ibid., article 35, paragraph 2 (9).

25/ Ibid., article 35, paragraph 2 (11). See also article 38 (2) which explains that the provincial governor "exercises a right of oversight over the activities of the magistrates, as well as over the civil servants and agents governed by the judicial mandate operating in his or her jurisdiction". It is rather difficult to understand how this provision squares with the control exercised over "justice" by the central authorities.

But see article 1 of the 1969 law governing the status of security force intelligence officials of AND (National Documentation Agency (at that time CND, National Documentation Centre), which states that police officers or officials of the public prosecutor must "seek the obligatory advice of the Director-General" before they can arrest or even question an agent for an act committed in the course of his duty. Where an act of a security force intelligence official is incidental to an activity unconnected to his or her functions with the AND, the Director-General must be notified. See Ordinance-Law 78-289, dated 3 July 1978, at article 44. The Director-General is a national authority who enjoys the de facto status of a Cabinet official.

26/ Ibid., article 34.

27/ Constitution, article 35 (1983).

28/ La Territoriale: du Roi Leopold au Marechal Mobutu Sese Seko 33-34 (1984). The book was compiled by the Institut Makanda Kabobi, the official training institution of the cadres of the MPR. According to information received by the Special Rapporteur, the section cited was among those used to teach students the "basis of the exercise of political power of the provincial governor under Zairian Administrative Law".

29/ Compare article 35 of Ordinance-Law 82-006 with ibid., article 15, second paragraph, which states, in relevant part, that "[the Regional Assembly] shall not in any event infringe upon those competencies reserved to the central power or to its local representatives, most notably, Justice, Defense, Internal and External Security and Foreign Relations" (emphasis added). Article 38 of Ordinance-Law 82-006 sets forth the regulatory structure within which the provincial governor operated in accordance with the status accorded him by the President of the Republic. Yet neither article 35 nor article 38 gives a clear indication of the extent to which the hierarchical linkages between the President of the Republic, the Provincial Governor, the Regional Assembly and the local agents of the central power interacted, most notably in the domains of internal and external security.

30/ See, e.g., Matua and Rosenblum, op.cit., p.25, on the question of the ethnic composition of the State security apparatus:

> "Far more biting was the memorandum submitted by employees of the Department of Foreign Affairs which addressed one of the most sensitive subjects in Zaire, the high percentage of senior government and party officials who are related to or are from the same region as the President, that of Equateur [footnote omitted]. According to the memorandum, the concentration is particularly dense in the security forces."

See also note 33 and accompanying text for a listing of the percentages of persons in key centres of power who derive from Equateur province. The listing was compiled under the direction of the then Minister for Foreign Affairs and present Prime Minister, Mr. Nguz a Karl-i-Bond. The Department of Foreign Affairs Memorandum, dated 17 March 1990, noted that residents of Equateur make up 19 per cent of the Central Committee, 27 per cent of the Executive Committee, 46 per cent of the officers in the armed forces and 34 per cent of the diplomats.

31/ The quotation is drawn from President Mobutu's 3 May 1990 speech. See *La Semaine*, 4 May 1990, op.cit.

32/ The former Vice-Prime Commissioner of State and Commissioner of State of the Rights and Freedoms of the Citizen (*Vice Premier Commissaire d'Etat et Commissaire d'Etat aux droits et libertés du citoyen*), Maître Nimy Mayidika Ngimbi, was appointed as principal security adviser to the President. He replaced Mr. Nkema, who derives from Equateur province, although not from the Ngbandi tribe. Mr. Nkema was appointed Ambassador to the United Kingdom. General Likulia was named to replace Mr. Ngbanda, who derives from the Ngbandi tribe of Equateur province, as the head of AND. Mr. Ngbanda was appointed a political counsellor to the President.

33/ Sometime in the latter half of 1990, the two agencies were fused to form the National Intelligence and Protection Agency (Service national d'intelligence et de protection [SNIP]).

34/ Ordinance No. 85-189, dated 25 July 1985, article 1, as modified by Ordinance No. 86-161, dated 31 May 1986.

35/ See Ordinance No. 87-003, dated 7 January 1987, article 3, and Ordinance No. 87-054, dated 9 February 1987, article 1.

36/ See *infra*, section II.B.2 (c).

37/ The general commanding the First Military Region had been called to Kinshasa for consultations, apparently on 10 May, for reasons unknown to the Special Rapporteur.

38/ In law, the Civil Guard commander reported directly to the provincial representative of the President, Governor Koyagialo.

39/ Ordinance-Law No. 72/041, dated 30 August 1972, as amended, articles 1 and 2.

40/ Ordinance-Law No. 86/036, article 1, paragraph 1, article 2 and article 3.

41/ E/CN.4/1990/17/Add.1. In response to an invitation from the Government of Zaire, Mr. Kooijmans visited Zaire in January 1990. The legal prescriptions governing the Civil Guard were the same during the period of Mr. Kooijmans' visit as during the period of the events being considered by the Special Rapporteur on summary or arbitrary executions.

42/ Ibid., paragraph 15.

43/ The national component of this intelligence apparatus, headed by General Mahele, was known as "G2", the provincial component as "T2" and the local component as "S2". When the older structure was reconstituted as SARM, President Mobutu appointed General Mahele as its head.

44/ See paragraphs 43-52 above.

45/ Shortly before the events in question, the Division had been upgraded from a Brigade (Special Presidential Brigade, BSP). Some testimony received by the Special Rapporteur from persons allegedly involved in or having knowledge of the events of the night of 11-12 May 1990 mistakenly labelled the "DSP" the "BSP".

46/ The Special Rapporteur received information concerning the campus security apparatus from, among others, several former students who allegedly had occupied key positions in that apparatus.

47/ On the basis of the information he has received, the Special Rapporteur has reason to believe that several UNILU professors furnished the authorities with information. See also Regional Assembly Report, sections 4.1 and 4.3 on this point.

48/ According to discussions between the Special Rapporteur and the Rector *ad interim* of the University of Lubumbashi during the course of his mission, student lists for the academic year 1989/90 did not exist. These could not be established until the holding of examinations in June/July 1991. Following the events of 8-12 May 1990, the UNILU campus was closed and the academic year was suspended. The 1989/90 academic year was revived, in abbreviated form, with the reopening of the UNILU campus in March 1991.

49/ See paragraphs 43-52 above.

50/ Ibid.

51/ The Voix des sans voix, an independent Zairian newspaper, reported that campus protests erupted shortly after the President's 3 May 1990 speech and its acceptance by the Parliamentary Assembly. The first protest was held at the Institut supérieur des techniques appliquées (ISTA) in Kinshasa. Students at other institutions of higher education in Kinshasa followed, including the Institut de pédagogie national (IPN), the Institut supérieur de commerce (ISC), the Institut de bâtiment et de travaux publics (IBTB) and the University of Kinshasa. See La Semaine, 26 May 1990, p. 15 and "Perçu chronologique des événements socio-politiques au Zaire du 24 avril au 10 mai 1990", Voix des sans voix. Student protests also were held at educational institutions in Lower Zaire, Upper Zaire and Kivu. The planned protest march at the University of Lubumbashi was stopped in its tracks under orders of the provincial authorities.

52/ See Regional Assembly Report, section 4.1.2 on the question of the de facto dismantling of the JMPR structure. The Report does not comment upon the validity vel non in law of this action:

> "The presidential address of 24 April split open all of the political structures. At the provincial level, the Regional Committee of the MPR, which had served as the forum of all decision-making, disappeared. At the university level, the Committee Division of the MPR in consequence also disappeared. In a certain sense, the students felt liberated and greeted this opening to democracy in a publicly demonstrative way. Both the provincial and the academic authorities found themselves without formal interlocutors ("interlocuteurs attitrés"). In this joyful explosion of political liberation, the students did not hesitate, at times, to become overly jubilant and they tolerated ill certain forms of harassment, in particular, that of the Civil Guard and of the defunct Student Brigade, which had not been completely disarmed.
>
> The events on the campus of Lubumbashi helped the Commission to understand the inability of the academic authorities to contain the students, to come to an understanding of their real problems and to ensure order and security by means of the university police organizations."

53/ See paragraphs 105-107 above for a description of the role played by the regional mutuels on the University campus.

54/ The Regional Assembly Report dates this assembly at 8 May, the Judgement, at 9 May 1990. See Regional Assembly Report, section 2.1 and Judgement, pp. 19-20.

55/ See paragraphs 167-213 below.

56/ According to information received by the Special Rapporteur, including from former members of various expressions of the State security apparatus, the "passer à tabac" is a form of brutal beating. On the basis of the information at the disposal of the Special Rapporteur, the "passer à tabac" is a typical form of torture administered to detainees of many organs of the State security apparatus.

57/ See paragraphs 96-108 above on the campus security apparatus.

58/ According to information received by the Special Rapporteur, the 1990/91 academic year Brigade Commander derived from the Mongo rather than the Ngbandi tribe and, throughout the period of events in question, his loyalty wavered between continued adherence to the largely Equatorial State security apparatus and sympathy for the cause of the student opposition movement on the university campus.

59/ The Special Rapporteur believes, on the basis of his information, that most of the intended victims of the Gata group's revenge, the ringleaders of the events of 9-10 May, not only had fled the campus, but in some cases, had again switched sides and betrayed the names of participants in the 9-10 May operation to provincial members of the State security apparatus. See paragraphs 167-213 below on this point.

60/ Some accounts, including that adopted by the Court in its Judgement, report that a room search followed hard upon the unmasking of one or several of the mouchards sometime during the day of 9 May 1990. See Judgement, p. 20.

61/ See paragraphs 167-213 below for additional details on this point.

62/ It has been explained to the Special Rapporteur that the term "parents" is to be construed in a broad sense. A "parent" may be someone of the same tribal group, as well as someone who is or is not of the same ethnic background, but is an elder individual with whom the person establishes a relationship of trust.

63/ See Judgement, p. 32, where the Court cites from confidential report No. 05/ANI/D7/0000287/90, dated 17 May 1990, and addressed by the Provincial Director of the National Immigration Agency (ANI), Mr. Gata, to Governor Koyagialo concerning the events of 9-10 May 1990.

64/ According to information received by the Special Rapporteur, these students, despite their notoriety within the State intelligence structure, managed to remain without incident in Lubumbashi for up to three weeks after the events in question. Thereafter, most of them removed themselves to third countries in Africa and abroad. The three mouchards, victims of the "witch-hunt" of 9-10 May, once rescued, were of course available to name their tormentors. Moreover, most of the mouchard network had escaped unharmed to safety with the authorities. These informers would certainly have been keeping close track of the developments on campus since the founding of SNS, and surely would have identified its leaders - and hence the ringleaders of the events of the night of 9-10 May - to the intelligence services.

65/ See, e.g. Judgement, p. 22.

66/ According to the information at his disposal, the Special Rapporteur is inclined to believe that the Governor intentionally had downplayed the apparent significance of the events of 8-10 May in his daily communications with the Présidence. First and foremost, it was not in the best interests of Governor Koyagialo to signal to the Présidence that he was unable to control the situation in his own jurisdiction. Second, the Governor traditionally had enjoyed the reputation of being a man of dialogue. Although the UNILU students no longer viewed him as being able to resolve differences concerning the practical and political situation of student life, the Governor probably thought that a direct exchange of views might have succeeded in diffusing the rather heated situation which had developed on the campus.

67/ Major Bayenyama Makabe, commanding officer of the 211th Infantry Battalion, also called on the radio from his headquarters to suggest that the troublesome students should be deprived of their electric power and water. It is not known whether this was an independent initiative or whether the Major was thus offering his advice about an operation in which he was expecting to participate.

68/ Lingala is the language of service most commonly used by the military to facilitate communication in the polyglot military and security services. It was not the language predominantly spoken among students on the University of Lubumbashi campus.

69/ "Geros" is the shortened form of the name of Mr. Gerembuisambo Dagbia, one of the student defendants cited under file RP/30/CR, but not tried. See Judgement, p. 3.

70/ See, e.g. Judgement, pp. 44-46, on publicity concerning mass graves and the inability or unwillingness of several witnesses who had claimed knowledge of the same to reaffirm that knwoledge before the Court. These witnesses were Mr. Nguz a Karl-i-Bond, at the time a well-known opposition leader from Shaba province and at present the Prime Minister of Zaire; Mr. Muteta, a doctor and member of the Shaba Regional Assembly Commission of Inquiry; and Mr. Ngoy Kikungula wa Maloba, editor of the local newspaper Lushois Journal.

71/ Most reports received by the Special Rapporteur confirm that three corpses were visible at dawn: two by block 7 and one behind the toilets by block 5.

72/ See annex IV for a list of allegedly dead and missing University of Lubumbashi students, on which those who fell victim to the Gata group attack may figure.

73/ The Prosecutor General of the Republic of Zaire overtly conceded, in his closing argument to the Court, that closing down the so-called massacre at Lubumbashi affair through the trial in the matter State v. Koyagialo et al. was crucial to the balance-of-payments situation of Zaire:

> "Owing to the hasty evacuation of the students of this [Lubumbashi] university, together with a lack of adequate investigatory means at our disposal, we were not able to present today to the censure of your Court, despite one year of investigation, all of the actors, authors of these acts worthy of a Western, acts which, in addition, placed our State on the bench of the accused, violators of human rights, thereby placing us among those States unworthy of receiving international financial aid.
>
> " ...

> "Since the incidents of Lubumbashi, the crisis suffered by our country has reached dizzying proportions owing to the freeze in foreign aid. Our foreign partners have turned their back on Zaire, our country is clearly considered the only place in the world where human rights are the most trampled on."

74/ In fact, although the *Regional Assembly Report* was submitted to the Court as a piece of documentary evidence in the matter State v. Koyagialo et al. authentication of the document was contested. Thus, it is not wholly clear whether the *Report* is regarded as an official document under Zairian law. For the purposes of the present report, the Special Rapporteur regards the *Regional Assembly Report* as an official document.

75/ *See Regional Assembly Report,* section 1.1.

76/ *See* Constitution, title IV (Territorial entities), article 105. *See also* Ordinance-Law No. 82-006, dated 25 February 1982, op. cit., at title IV (Control of territorial entities), chapter I (The Province), articles 202 and 203.

77/ The law is somewhat ambiguous on the relationship between the competence of the Provincial Governor and that of the Regional Assembly. On the one hand, "[t]he Regional Assembly exercises decision-making power with respect to ... control of the activities of the Provincial President of the *Mouvement Populaire de la revolution* and of the Provincial Governor". *See* Ordinance-Law No. 82-006, dated 25 February 1982, op. cit., at article 15 (9). On the other hand, "[t]he Regional Assembly exercises decision-making power with respect to ... supporting a priori the plan of action of the Provincial President of the *Mouvement Populaire de la revolution* and the Provincial Governor and controlling a posteriori such plan". *See* ibid. at article 15 (7).

78/ *See* ibid. Reading the two subparagraphs together, one may draw the conclusion that the Regional Assembly is competent to scrutinize the so-called plan of action of a provincial governor only to the extent of determining whether, on its face, it is not contrary to law. However, were such a plan of action to be contrary to law, the Provincial Governor would be acting *ultra vires* and such a plan would be void *ab initio*. The Regional Assembly, one must conclude, would be competent in such an instance merely to pronounce the nullity of the plan. The actual annulment of the plan, however, apparently must be pronounced by the Commissioner of State of Territorial Administration. *See* ibid at article 203. Process against a Provincial Governor for excess of power also would lie within the jurisdiction of the Commissioner. *See* ibid. Where the plan apparently is at once *ultra vires* and of a criminal character or yields results in contravention of penal law, the competent body to order an investigation into the matter would be the provincial Office of the Prosecutor General (*Ministère publique* or *Parquet*).

79/ Reportedly, the Commissioner of State blocked consideration of the *Regional Assembly Report*. Thereafter, upon the order of the President of the Regional Assembly, the *Report* was seized. The text of the *Regional Assembly Report* was leaked to the press sometime in December 1990.

80/ Sitting on the Court were the following persons: Mr. Balanda Miluin Leiel, Chief Justice; Mr. Mbuinga-Vubu, Justice and Messrs. Munona Ntambambi-Lanji, Kalonda Kele Oma and Tinkamyire bin Ngigeba, Associate Justices. Assisting the Court were: Mr. Kachama Mangalo à Gianga, Magistrate, Office of the Prosecutor General and Mr. Gakwaya Muheto, Clerk of the Court.

81/ The Special Rapporteur notes with interest that particular charges against certain major provincial civil and military authorities closely paralleled the accusations levelled by the Parliamentary Commission Report against those authorities. See also supra at section III.B.2.

82/ See Judgement, pp. 10-11.

83/ Ibid, p. 11.

84/ Ibid, pp. 11-12.

85/ Ibid., p. 12.

86/ Ibid., pp. 1-14.

87/ Ibid., pp. 12-13

88/ The Special Rapporteur notes the rather curious situation of file RP/30/CR presented to the Court by the Prosecutor General of the Republic of Zaire. The supposed "ringleaders" of the student "commando", Messrs. Payou Bell and Tokongba Ntete, never were in custody, although they were interviewed by the judicial authorities in instruction. Moreover, none of the students "commando" members cited in file RP/30/CR appeared on any lists of student attackers at the disposal of the Special Rapporteur including the list which appeared in the Regional Assembly Report (see Regional Assembly Report at section 4.2), with the sole exception of Mr. Gerembuisambo-Dagbia (see Judgement, p.3). Finally, according to information at the disposal of the Special Rapporteur, the student "commando" members of the first group which attacked the UNILU campus on the night of 11-12 May 1990 usually were referred to as the "bande à Geros", an apparent reference to student defendant Gerembuisambo-Dagbia.

89/ In accordance with the presidential decrees which had lifted the immunity from prosecution of Messrs. Koyagialo, Lokiyo, Gata and Uba, jurisdiction over the former Provincial Governor, Mr. Koyagialo, lay exclusively with the Supreme Court of Zaire. The Supreme Court sat in the matter State v. Koyagialo et al. as a court of first and last instance, thereby excluding the possibility of an appeal of the Court's ruling to a higher judicial instance. The cases of the other defendants were joined to that of the Governor, also depriving those defendants of the possibility of appeal. Factual nexus of the defendants' cases was the grounds for this joinder.

90/ Among those persons are individuals interrogated by the inquiries established by the Regional Assembly and the Parliamentary Commission, together with individuals cited by other information sources available to the Special Rapporteur, but not heard as witnesses in the trial of the matter State v. Koyagialo *et al*. They are as follows:

Military persons

Colonel Mokonzi: identified as commanding the 21st Brigade of the Zairian Armed Forces;

Major Bayanyama Makabe Naomi: identified as commanding the 211th infantry battalion of the Zairian Armed Forces;

Lieutenant Colonel Djamba: identified as the duty field officer of the 9th Miliary Circumscription during the week of the events in question;

Lieutenant-Colonel Takula: identified as the commanding officer of the National Gendarmerie posted in and around Lubumbashi;

Sergeant Kongolo Monga: identified as a patrol leader in the unit of the National Gendarmerie under the immediate command of Captain Bongonda;

All unit and subunit commanders of the Civil Guard deployed on or around the campus of the University of Lubumbashi during the period 8-12 May 1990.

Professors at the University of Lubumbashi

Mr. Olfio Ben Olomi;

Mr. Mondonga Mokoli.

Staff members of the regional authorities

Aides, personal staff and chauffeurs of Governor Koyagialo;

Chauffeurs of AND.

Others

Mr. Bongo Nganzo: identified as an employee of GECAMINES and Director of the Rolling Mill and Cabling unit. GECAMINES is the largest and most profitable industry in Shaba province and is engaged primarily in copper extraction and production. Allegedly, Mr. Bongo participated in the planning of the aggression on the UNILU campus on the night of 11-12 May 1990 and hid some of its student participants after the fact;

Mr. Ngobotoba: identified as the Regional Director of RENAPI, REGIE DU SHABA, and alleged to have organized and held in his home on 10 and 11 May 1990, clandestine meetings preparatory to the attack on the campus;

Personnel of the National Airport Administration Authorities;

Personnel of Air Zaire (some of the Air Zaire personnel apparently were heard during the preliminary instruction, but not by the Court.

91/ See Judgement, pp. 25-28 and 53.

92/ Ibid., p. 52.

93/ Under Zairian law, crimes are of three types in order of ascending gravity: infraction, delict and crime. Non-assistance to persons in danger is a delict. It should be noted that when the Court refers to the infraction of non-assistance to persons in danger with which Mr. Bongonda is charged, the Court apparently is not using the word in a technical sense. See ibid., p. 52.

94/ Ibid., pp. 52-53.

95/ Ibid., pp. 51-54.

96/ Ibid., p. 54.

97/ See Regional Assembly Report, section 4.1.1.

98/ Ibid.

99/ Ibid., sections 4.2 and 4.3

100/ Ibid, section 4.2.

101/ See Parliamentary Commission Report, section III.2.

102/ Ibid., sections II(1.2), II(1.4), III(1), III(2) and III(3).

103/ The Court cited, without commenting upon, the landing of the Air Zaire DC-10 at Luano airport (the international airport of the city of Lubumbashi), and also spontaneously raised and then dismissed Mr. Digekisa's testimony regarding the overflight of a military aircraft. Consequently, the Court stated:

> "It must be concluded, for lack of other elements of proof, that the 'commando' which operated on the campus during the night of 11 to 12 May 1990 did not contain elements external to Lubumbashi arriving from elsewhere on the day of the attack itself."

See Judgement, pp. 42-43.

104/ Ibid.

105/ See Regional Assembly Report, section 4.2.

106/ In theory, RVA was responsible for recording data regarding all flight arrivals and departures. In addition, RVA may have been responsible for centralizing the passenger manifests of those flights. RVA also had security responsibilities in that it functioned as an airport police force.

107/ See Regional Assembly Report, section 4.2.

108/ Ibid.

109/ Ibid.

110/ See Parliamentary Commission Report, section II(1.3).

111/ See Judgement, p. 9.

112/ See Regional Assembly Report, section 4.2.

113/ Ibid.

114/ See Parliamentary Commission Report, section II(1.3).

115/ Ibid., section III (3).

116/ See Judgement, pp. 44-46.

117/ The Judgement reviewed the testimony of various persons, including those who, through the national or international media, had declared knowledge of either a massacre or mass graves, or both. See Judgement, pp. 44-46.

Among the persons who furnished testimony to the Court was Mr. Nguz a Karl-i-Bond. Owing to the definitive and precise character of the allegations Mr. Nguz had made in the aftermath of the so-called massacre at Lubumbashi, his testimony had been considered by the Court and the public as critical both to an understanding of the factual circumstances surrounding those events and to an attribution of responsibility therefor. Yet, despite Mr. Nguz's previous affirmations concerning the existence of a mass grave, as well as inferences of Mr. Koyagialo's responsibility for the massacre, before the Court Mr. Nguz stated that he was only an indirect witness. Curiously, perhaps, the present Prime Minister of Zaire characterized his depositions on the subjects of a massacre and mass graves as those given by a mere witness and, in that context, he stated that he had nothing to say. Then, in an apparently contradictory fashion, Mr. Nguz declared that as the leader of an opposition party in the present regime, he assumed full responsibility for his declarations.

According to information received by the Special Rapporteur, the Court issued numerous warrants ordering the reappearance of Mr. Nguz to give further testimony. Repordedly, Mr. Nguz neither responded to the warrants nor appeared again before the Court.

118/ By reference to the evidence before the Court, including witness testimony, the Judgement stated:

> "As for the question of knowing how many deaths there were or, in other words, whether or not there was a massacre during the course of the events of 9 to 12 May 1990, on the one hand, and if, on the other hand, the bodies were tossed into a mass grave, the Court notes that, given the present state of the elements in the file, noting would permit either a confirmation or a denial that there was a massacre."

Ibid., p. 44.

119/ Following its review of witness testimony which tended neither to confirm nor deny either more than the one death (Mr. Ilombe wa Ilombe) officially recognized by the Government, or the existence of a mass grave, the Court referred to the repeated instances of Mr. Digekisa Piluka's pronouncement on the subject. According to Mr. Digekisa, more than one death resulted from the events of the night of 11-12 May 1990. Furthermore, Mr. Digekisa claimed to have seen military vehicles loaded with corpses. See ibid., p. 46.

According to the information at the disposal of the Special Rapporteur, Mr. Digekisa was not an eyewitness to the events of the night of 11-12 May 1990. The Reverend Brother was, rather, tucked away in the Parish House at a distance from the campus. Nevertheless, the Special Rapporteur has reason not to discount the probative value of indirect accounts given by Mr. Digekisa to the Court concerning the events in question.

According to the Special Rapporteur's information, Mr. Digekisa was at once the figurehead President of the Syndicat national solidarité and the somewhat naive and more-than-willing mouthpiece for transmission to the general public of information obtained by certain SNS members. Based on the information at the disposal of the Special Rapporteur, these members both wielded the real power in SNS and were well positioned to obtain information from government sources, including from various expressions of the State security apparatus. These persons were among the student defendants cited under file RP/31/CR.

120/ See ibid., p. 46, which states, in relevant part

> "From all which precedes and, given the present state of the elements in the file, nothing would permit either the affirmation or invalidation of a massacre of students at Lubumbashi during the course of the events of 9 to 12 May 1990, on the one hand, and, on the other hand, that there would not have been other deaths than the case of Ilombe wa Ilombe, the only known until now."

121/ See Regional Assembly Report, Section 4.3.

122/ See Regional Assembly Report, Section 4.3. The Report attributed responsibility to numerous provincial civil and military authorities, together with the following persons: Governor Koyagialo; Mr. Gata; Mr. Uba; Colonel Lokiyo; Major Lokombe; Major Bayanyama Makabe; Captain Bongonda; Lieutenant Makunga; Messrs. Aloni, Olofio, Monbonga, Elonga, Nlandu, Tshitenge, Bongo and Atundu.

123/ Ibid.

124/ Judgement, p. 53 (emphasis added).

125/ See paragraph 18 above.

Annex I

SCHEDULE OF OFFICIAL MEETINGS OF THE SPECIAL RAPPORTEUR ON SUMMARY OR ARBITRARY EXECUTIONS DURING HIS MISSION TO ZAIRE, 8-11 MAY 1991

8 May 1991 (Kinshasa)

Chief Justice of the Supreme Court, Mr. Balanda Mikuin Leliel

Minister of Justice

9-10 May 1991 (Lubumbashi)

Governor, Shaba province, and President, Regional Assembly of Shaba

Prosecutor General, Shaba province: Mr. Pataule Mibizabo Mantinti

Rector *ad interim*, University of Lubumbashi: Professor Kilanga Musinde

11 May 1991 (Kinshasa)

Major Fofe, First Counsellor and Mr. Siana, Legal Adviser, National Intelligence and Protection Service (SNIP)

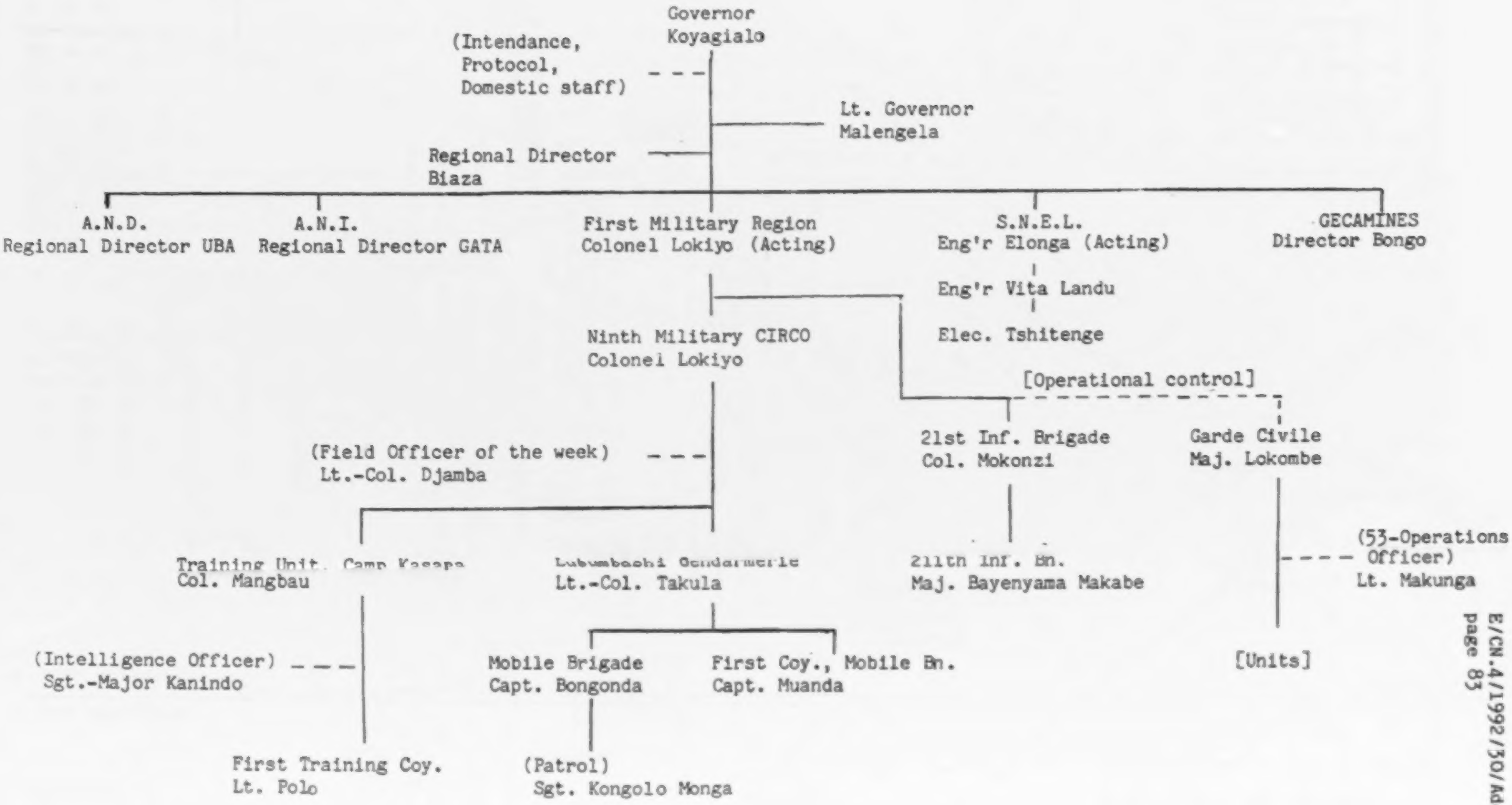
Mr. N'Dom Nda Ombel, Secretary of State, Professor Kasongo Muidinge, Legal Adviser and Mr. Mongonza Bosengi, Political Counsel, Ministry of Territorial Administration and Decentralization

Colonel Engwala, Deputy Chief of Staff, Colonel Mbala, Information Officer, Colonel Pambu, Director of Logistics, Lieutenant Colonel Lisika, Director of Instructors, Lieutenant Colonel Nzebo, Director, Lieutenant Colonel Kamwena, Director, Research Office, Major Bundutidi, Director, Office of Agriculture, Major Shamava, Deputy Director of Logistics, Lieutenant Colonel Makoso, Director of Communications and Major Masani, Deputy Director of Personnel, Office of the Chief of Staff of the National Gendarmerie

Mr. Itambo Kabangu, First Counsellor, Lieutenant Colonel Ndebo, Administrative Director and Treasurer, and Major Kisukula Abeli, Magistrate, Office of the Supreme Commander of the Civil Guard

Annex II

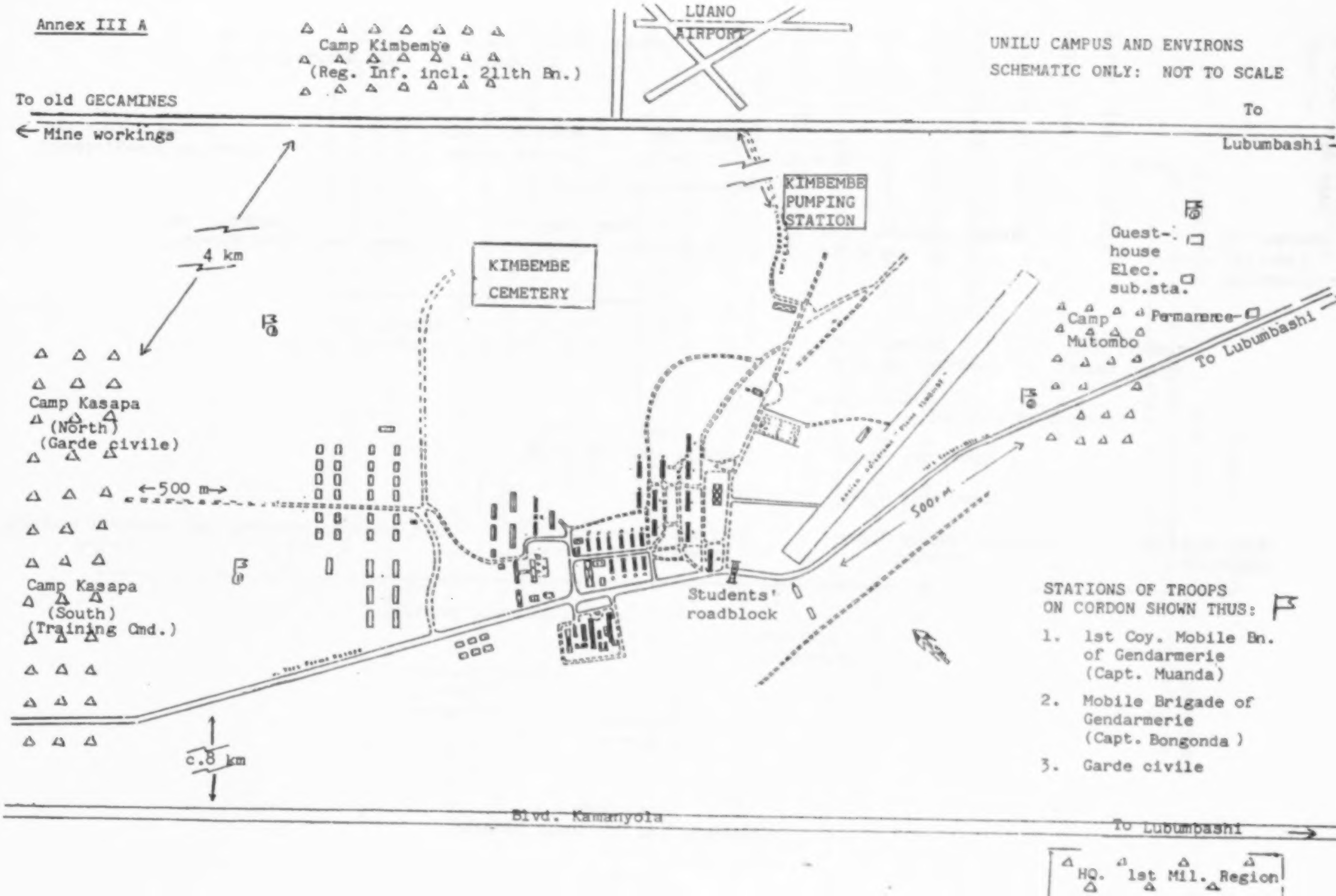
COMMAND STRUCTURE IN LUBUMBASHI:
MAY, 1990


Governor
Koyagialo
(Intendance,
Protocol,
Domestic staff)
Lt. Governor
Malengela
Regional Director
Biaza
A.N.D.
Regional Director UBA
A.N.I.
Regional Director GATA
First Military Region
Colonel Lokiyo (Acting)
S.N.E.L.
Eng'r Elonga (Acting)
Eng'r Vita Landu
Elec. Tshitenge
GECAMINES
Director Bongo
Ninth Military CIRCO
Colonel Lokiyo
[Operational control]
21st Inf. Brigade
Col. Mokonzi
Garde Civile
Maj. Lokombe
(Field Officer of the week)
Lt.-Col. Djamba
Training Unit, Camp Kasapa
Col. Mangbau
Lubumbashi Gendarmerie
Lt.-Col. Takula
211th Inf. Bn.
Maj. Bayenyama Makabe
(53-Operations
Officer)
Lt. Makunga
(Intelligence Officer)
Sgt.-Major Kanindo
Mobile Brigade
Capt. Bongonda
First Coy., Mobile Bn.
Capt. Muanda
[Units]
First Training Coy.
Lt. Polo
(Patrol)
Sgt. Kongolo Monga

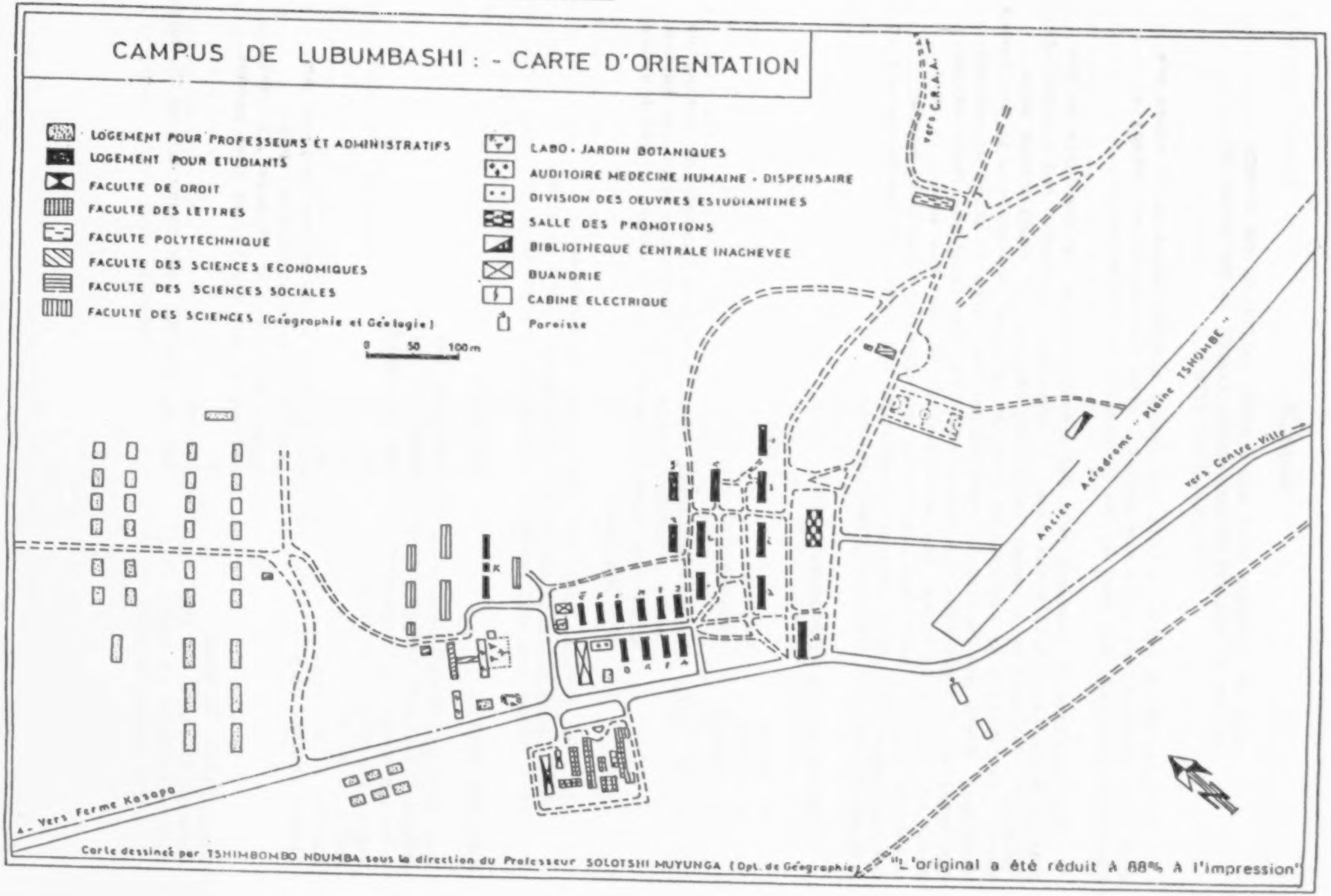
Annex III A

UNILU CAMPUS AND ENVIRONS

SCHEMATIC ONLY: NOT TO SCALE


Camp Kimbembe
(Reg. Inf. incl. 211th Bn.)
LUANO
AIRPORT
To old GECAMINES
← Mine workings
To
Lubumbashi →
KIMBEMBE
PUMPING
STATION
4 km
KIMBEMBE
CEMETERY
Guest-
house
Elec.
sub.sta.
Camp
Mutombo
Permanence
To Lubumbashi
Camp Kasapa
(North)
(Garde civile)
←500 m→
Camp Kasapa
(South)
(Training Cmd.)
500 m
Students' roadblock
STATIONS OF TROOPS
ON CORDON SHOWN THUS:
1. 1st Coy. Mobile Bn. of Gendarmerie (Capt. Muanda)
2. Mobile Brigade of Gendarmerie (Capt. Bongonda)
3. Garde civile
c.8 km
Blvd. Kamanyola
To Lubumbashi →
HQ. 1st Mil. Region

Annex III B



CAMPUS DE LUBUMBASHI : - CARTE D'ORIENTATION

LOGEMENT POUR PROFESSEURS ET ADMINISTRATIFS
LOGEMENT POUR ETUDIANTS
FACULTE DE DROIT
FACULTE DES LETTRES
FACULTE POLYTECHNIQUE
FACULTE DES SCIENCES ECONOMIQUES
FACULTE DES SCIENCES SOCIALES
FACULTE DES SCIENCES (Géographie et Géologie)
LABO - JARDIN BOTANIQUES
AUDITOIRE MEDECINE HUMAINE - DISPENSAIRE
DIVISION DES OEUVRES ESTUDIANTINES
SALLE DES PROMOTIONS
BIBLIOTHEQUE CENTRALE INACHEVEE
BUANDRIE
CABINE ELECTRIQUE
Paroisse
0
50
100m
vers C.R.A.A.
Ancien Aérodrome " Plaine TSHOMBE "
vers Centre-Ville
Vers Ferme Kasapa

Carte dessinée par TSHIMBOMBO NDUMBA sous la direction du Professeur SOLOTSHI MUYUNGA (Dpt. de Géographie) "L'original a été réduit à 88% à l'impression"

Annex IV

LIST OF REPORTED DEAD AND MISSING FOLLOWING THE EVENTS ON THE UNIVERSITY OF LUBUMBASHI CAMPUS ON THE NIGHT OF 11-12 MAY 1990

Variants which arise in both the system and the spelling of names are such that duplications still may appear in the listing below. Where a Christian name also was used by the person, it is bracketed.

The listings of academic year and specialization, if available to the Special Rapporteur, follow the name. G Signifies "Graduate" and L signifies "*Licence*", followed by a number indicating the year of study within each level. The faculty is abbreviated from the original designation in the French language. Where the faculty is reported but the level of study is unknown, the notation "??" precedes the abbreviation for the faculty. Where neither level nor faculty is known, the notation "NK" follows the name. It also should be borne in mind that, according to information received by the Special Rapporteur, many students present on the campus of the University of Lubumbashi were not officially matriculated.

Key to source citations:

E - *Elima*)
M - *Muten*) Zairian
D - *Demain*) newspapers
S - *Le Soir*)
H - *Het Volk* Belgian newspaper [when in square brackets following the code for another source, this indicates that the Special Rapporteur drew his version of the other ultimate source from *Het Volk*]

Muf - Mr. Mufuta, Professor, University of Lubumbashi
LDH - *Ligue zairoise des droits de l'homme*, Shaba chapter
RA - Shaba Regional Assembly Commission of Inquiry

Name and Faculty	*Source(s)*
Abel Kajanga, G2 SPA	D[HV], S, Muf
Ambuya Nfundi, G2 Polyt.	D[HV], S, Muf
Bizuri Muyengo, G1 Géogr.	LDH, M, LDH[HV]
Bukasa Kasankiti, G3 Droit	RA
Emala Onia, NK	RA
Fayida, L1 Sc. Soc.	Muf
Ilombe Ilombe, G1 L.L. Afr.	RA, M; died at Gecamines hospital and officially acknowledged as dead. *Note*: Muf lists an "Elombe", G2 Métal., who may or may not be the same person.
Isasa Tsasa, G2 Econ.	E
Kabanga Kabadiki, G3 Angl.	LDH, M
Kabatwila Betu, G3 Angl. (a/k/a Kabatnila Belu)	LDH, M, LDH[HV] (who lists him as G3 Polyt.)

Name and Faculty	Source(s)
Kadan Kelwa, NK	RA
Kalenga Mwenge, L2 Géogr.	LDH, M, LDH[HV]
Kalonda Djibu, L2 Droit (a/k/a Kabanga Djibu)	LDH, M, LDH[HV]
Kanda Mukole (alias Dekas), NK	RA
Kapend Mubandile, NK	RA
Kaswaswa Mudiandambo, NK	RA
Katambay Diataba, G1 Chimie.	RA
Kaup (Richard), ?? Méd. Vet.	HV, Muf
Kaupe, ?? Econ. (brother of Richard)	Muf
Kayembe (Clément), NK	RA
Kaylinda Sekweke, NK	Muf
Kayumba (Willy), G3 SPA	Muf
Kilawuri, L1 Sc. Soc.	Muf
Kilaye Mulebela, G1 SPA	RA
Kitenge, G3 Droit	Muf
Kyulu Mitimingi, G1 Angl.	LDH, M, LD[HV]
Luboya Kadima, L2 Soc.	RA, M, HV Note: Many students reported seeing the body. M and RA give him different room numbers.
Lumpungu Ilunga, L2 SPA	RA
Mabila Foba, ?? Rel. Int.	D[HV], S, Muf
Mabizizi Mavezi, ?? Méd. (a/k/a Mabisisi Mavasi)	D[HV], S, Muf
Makutuku (Georges), L1 Droit	LDH, M, LDH[HV]
Mashalale, NK	RA
Mashindola Kawango, G1 Econ.	RA
Masunda Lelo (Raphael), G2 Méd.	E
Mobolama, NK	RA
Mufabule, G3 Droit	Muf
Mullambilumbu, G2 Econ.	RA
Mulumba Tshiotolo, NK	RA
Mutombo Mupompa, NK	RA
Mwana, N/A	HV Note: This is a 15-year old boy, reportedly burned in the shop for which he was night watchman.
Ndoy Fume Koy, G3 Droit	RA
Ngalamulume, NK	RA
Ngoy Kibawa, G1 Rel. Int.	LDH, M, LD[HV]
Ngoyi Kamanda, G2 Droit	D[HV], S, Muf
Ngoyi [Mukwasa?], G1 Droit	Muf
Ngumbu, G3 Méd. Vet	Muf
Niati Di Nwanza, G1 Droit (Jean-Pierre)	E
Ntambwe (Moise), NK	Muf
Ntumba, NK (a woman, given name unknown)	Muf

Name and Faculty	Source(s)
Numbi Kabasele, G2 Droit	RA
Numbi Wa Nbanza, NK (a/k/a Numbo Wa Nbanza)	D[HV], S, Muf
Nzapate, ?? Droit	D[HV], S
Nsunda, NK	RA
Pambu Eka Nkwanza, G2 Econ.	E
Ruke Karibo, NK	HV
Samba, G2 SPA	Muf
Tschiband Matol, G3 Ling. Afr.	LDH, M, LDH[HV]
Tshilombo, G3 Phil. (a/k/a Tshilondo)	LDH, M, LDH[HV] (which lists him as G3 SPA)
Tshimanga Abel, NK (a/k/a Abel Tshimanga)	M, HV
Tshiomba Olomda, G2 SPA (a/k/a Tshiamba Olenda)	D[HV], S, Muf
Tshiyoyi Mulumba, NK	Muf
Yav Karumb, L1 Lettres	LDH, M, LDH[HV]
Zapate, ?? Droit	Muf

LIST OF STUDENT DEFENDANTS CITED IN FILE RP/31/CR WHO DID NOT APPEAR BEFORE THE COURT IN THE MATTER STATE V. KOYAGIALO *ET AL*.

It should be noted that, according to information received by the Special Rapporteur, the list of student defendants cited in file RP/31/CR is identical to the list of intended victims carried by one or both of the attack groups which operated on the University of Lubumbashi campus on the night of 11-12 May 1990. If this be the case, dead or missing students, less Mr. Digeskisa Piluka, also may be drawn from the list of defendants cited in file RP/31/CR. Nevertheless, on the basis of the information at his disposal, the Special Rapporteur has strong reason to believe that several of the below-listed persons no longer are in Zaire.

Epwa Ekpadzam, L1 Droit
Mwela Nkongolo, L1 Droit
Lobanga Bofola Bikale, D1 Méd
Kingungu Kifufu, L1 Rel. Int.
Zikembo Mbweno, L1 Rel. Int.
Ikundumo Nsada, L1 Droit
Malamba Gangunda, L2 Soc.
Kinga Omari, L1 Sc. Soc./SPA
Kauka Malungu, L2 Soc.
Mupupa, Dirigeant of JMPR
Badjange, NK
Pielo, NK
Bodika Bangidila, NK
Kilundu, NK
Pero, NK
Kingambo, NK

Selemani Manioga, NK
Kashama, NK
Mawawa, NK
Ngoy Mpenge, NK
Banga, NK
Sama Fundu, NK
Simba, NK
Mona, NK
Ngoma Lualu, NK
